RNI No. MAHBIL /2009/31744
Reg. No. MH/MR/South-318/2013-15

महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष ६, अंक १५] गुरुवार ते बुधवार, जून १९-२५, २०१४/ज्येष्ठ २९-आषाढ ४, शके १९३६ [पृष्ठे ४०, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील (भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त) अधिसूचना, आदेश व निवाडे.

BEFORE SHRI P. B. SAWANT
INDUSTRIAL TRIBUNAL, MAHARASHTRA, MUMBAI

REFERENCE (IT) No. 39 OF 1997.—Adjudication between–M/s. Hindustan Lever Ltd., Hindustan Lever House, 165/166, Backbay Reclamation, Mumbai 400 020— *AND* —The workmen employed under them, C/o. Hindustan Lever Mazdoor Sabha, Hindustan Lever House, 165/166, Backbay Reclamation, Mumbai 400 020.

Appearances.— Shri A. B. Choudhary, Representative for the First Party.
Mrs. Meena Doshi, Advocate for Second Party.

Award

1. This is a reference made by the Commissioner of Labour Under section 10(*1*)(*d*) of the Industrial Disputes Act, 1947 for adjudication of the Industrial Disputes between the above mentioned parties. The dispute stated in the schedule is appended to the order of reference.

2. The Second Party Union (hereinafter referred to as the "Sabha") has filed its statement of claim by way of justification to the demands for revision of payscales. The substance of those can be stated in nutshell as below.

3. In the year 1957, an agreement was entered into between the First Party Company (hereinafter referred to as the "Company") and the Sabha thereby agreed upon three points *i.e.* (1) Sabha was recognised by the employer as a representative union for all sections of Field Force employees, (2) All matters relating to the wages, salary and term and conditions of Field Force employees shall be dealt with at Bombay and (3) The company will not contest the issue about the members of the Field Force employees being the workmen and shall contest the issue only on their merits.

4. After the settlement of 1957, the five successive settlements were entered into. After the expiry of 1971 settlement, fresh charter of demands dated 31st December 1973 was placed by the Sabha pertaining to revision of service conditions of all India Field Force employees. But instead of holding discussion and in gross violation of the terms of conditions of 1957 individual member was served with an order advising them their revised service conditions. It is, therefore, alleged that without a notice of change under section 9A of the Industrial Disputes Act, a detrimental changes were brought into the service conditions of the Field Force employees. It was, therefore, clear that by such unilateral action by the company coupled with the victimisation with the union leaders, it was decided to dishonour 1957 settlement. The validity of binding force to 1957 agreement was challenged in the Supreme Court and it was held that 1957 settlement is binding and valid till it is terminated according to law. Inspite of that the company refused to restors adverse changes or hold negotiations with Sabha on 1973 charter of demands. It is pointed out that the beneficial changes in the service conditions made, have become implied service conditions of Field Force employees and those will have to be taken into consideration.

5. For non-implementation of the 1957 settlement and adverse changes in the service conditions under 1971 settlement etc. a complaint came to be filed in the Industrial Court by the Sabha bearing Complaint (ULP) No. 751 of 1984. It was decided in favour of the Sabha and the declarations and directions were given by the Industrial Court against the Company. The order was confirmed in the High Court excepting on the point of limitation. Ultimately Hon'ble Supreme Court restored the order of the Industrial Court. On the basis of the judgment and on the given background a reference has been referred to this Tribunal by short-listing it to 4 of the demands only.

6. The Sabha has submitted the justification so far as those demands are concerned which are enunciated as below :—

7. The Pay-scales are revised for 5 times. In Bhojwani Award, the Salesmen were placed at a higher level than C-III Clerks and the Sales Supervisors were placed at a higher than C-IV class in the Bombay office of the company. This position has been accepted by the company. Since the pay of the clerical cadre has gone up substantially during the period of present demand, the Field Force employees are equally entitled to revision in pay-scales in order to keep up the wage difference. The workmen in the clerical category enjoys stagnation allowance for which the demand is not made by the Field Force employees. The Sabha has relief on the Baj Award dated 29th June 1995 and reiterated the part of the observation therein and emphasised the wage scale increase as claimed. The pay-scales of the Salesmen in TOMCO as mentioned in the Bhojwani Award are also relied on and thereafter, it is pointed out that the cost of living index in the year 1971 was 835. Presently, it was over 9000 showing 10 times increase. Therefore, when the financial capacity of the company is not in dispute. Then there is no question for grant of wage revision. It is pointed out that the company is in position to bear the burden of wage increase.

8. So far as adjustment is concerned, the reference has been made to Shri Dongre Award wherein the necessary of revision has been placed on account that there has been no revision in the basic pay of the Field Force employees since 1971.

9. So far as demand of gratuity is concerned, the Sabha is relying on the observation of Hon'ble Supreme Court in a case of Metro Theatre for advancing the claim above the limit given in the Payment of Gratuity Act and relies on Shri Rane Award in Reference (IT) No. 203 of 1970.

10. Ultimately, it is prayed by the Sabha that thoguh the reference is made in the year 1997, it has been uphold by the Supreme Court that the company has followed unfair labour practice in refusing to negotiate and settle 1973 charter of demands. Since many of the Field Force employees have retired from service from 1974 and are entitled for revision in service condition as revision in wage-scales. Therefore, the award be made effective from 1st January 1974.

11. The company resisted all the contentions by filing written statement *vide* Exh. C-5. It is contended *interalia* that the reference is misconceived and is liable to be dismissed. It is the first and foremost contention of the company that in view of the settlement dated 24th March 1996 and 21st March 1997, no industrial dispute can exist. The Field Force employees are engaged in canvassing promotion and sales of company's products. Therefore, they are not the workmen within the meaning of I. D. Act. On this ground, it is prayed that the reference is misconceived. It is further submitted that the Sabha has no *locus standi* to raise a dispute. The Field Force employees are not the members of Sabha nor they desire to be represented by the Sabha. It is submitted that the Sabha is the union which is defung. The 1973 charter is a dead charter as it stands settled and replaced by as many as 20 salary revision resulting into 2(p) settlements in March, 1996 and 1997. The company has referred to the details pertaining to the Bombay Centre of the Sabha broke away from the Central Committee from the year 1969 with intimation to the Asstt. Commissioner of Labour. It is pointed out that the charter submitted in 1973 was not presented on behalf of Field Force employees in the Western Region and was restructed to 3 other Regions. By an award in Reference (IT) No. 203 of 1970 Hon'ble Shri Chitale held that the members of the Field Force were not the workmen. On these and other grounds, the company emphasised that since 1975 the Sabha both the Central Committee and Bombay Centre ceased to represent the members of the Field Force employees across the Country. Since 1975 onwards, the company has revised the terms and conditions of the services of the members of the Field Force employees every year on 21 occasions. After the decision of the Member, Industrial Court, the issue was discussed in the meeting with Field Force employees and by an overwhelming majority of the Field Force employees informed the Area Sales Manager that they are not the members of the Sabha and they do not went the Sabha to pursue the litigation on their behalf. Accordingly, 508 other Field Force employees present in the meeting across the Country in 28 different areas gave in writing individually that they are not the members of the Sabha. Thereafter in a subsequent meeting barring 2 of the Field Force employees of 576 members have signed the settlement under section 2(p) of the I. D. Act and accepted the revised terms and conditions of service. Therefore, it is submitted that the Sabha lost its representative capacity in respect of Field Force employees. The contention points out that the Sabha, therefore, cannot represent the Field Force employees merely on the basis of certain observation of Hon'ble Supreme Court in respect of arrangement of 1957 settlement and on this count, it is prayed that the reference ought to be dismissed.

12. It is the contention of the company that the company improved the terms and conditions of the members of the Field Force employees from year to year. The members, therefore, or the Sabha cannot seek the benefits of revision in wages and gratuity. Simultaneously, when they are getting the benefits on the pay revision. It is vehemently submitted that by way of abundant precaution, the company by its letter dated 3rd February 1997 terminated the arrangement entered into by exchange of correspondence in 1957. The company points out that on account of terminating the agreement of 1957, the position of 1957 in respect of the status of the Field Force employees will not remain. The company relief on the award by Justice Shri Chitale and Hon'ble Apex Court which has ruled that the Salesmen are not the workmen. The company asserts that the Conciliation Officer without giving an opportunity made a reference to this Tribunal without going into the question of existence of industrial dispute and whether the Sabha really represents the members of the Field Force employees.

13. The company reiterates that the service conditions of Field Force employees have been revised about 19 times and the packages were accepted practically by 100% of the employees without any protest. Therefore, the Sabha now cannot seek any indulgence for increased basic wages, adjustment and gratuity. It is pointed out that if the basic scales as demanded are granted, the employees will stand to lose which is not in the interest of the workmen. It is denied that the charter was submitted on behalf of All India Field Force employees. It is also denied that the order dated 30th June 1975 was issued by the company in violation of 1957 settlement. The averments that the utilaterally and arbitrarily changes are effected without giving notice of change. Since the methods of operation were changed, there was no question of granting any terminal leave. It is contended that the quality of work of Salesmen and Sales Officer has undergone a drastic change. The Field Force today does most creative function and as such it will be not to compare to the scales of the clarical workmen with the salaries of Field Force employees. It is also pointed out that there is no question of stagnation allowance as the service conditions of Field Force employees are revised every year. The reference pertaining to TOMCO Salesmen is said to be irrelevant as they are already part of the company. It is contended that there is hardly any ground of justification for seeking a revision in the pay-scales. All the earlier 19 revisions in pay-scales are accepted by the workmen without any protest. The Company reiterates that due to revision, the Field Force employees are also getting additional benefits towards the social security benefits, medical benefits. In addition to that they are getting the gratuity maximum of Rs. 1 lakhs. Therefore, the present package the Field Force employees are accepting is a part of the settlement and is binding on the individual workmen and also on the company. Therefore, there is no question for granting any of the demand with retrospective effect. The workers have accepted by everwhelming majority by entering into the settlement by which they do not want 1973 charter to be negotiated. With this and other grounds it is prayed that the reference be rejected.

14. On carefully considering the rival pleadings and evidence on record, my predecessor has framed the issues which are as below :—

(1) Whether the First Party proves that the Field Force workmen are not the workmen as defined under section 2(s) of the Industrial Disputes Act, 1947 ?	Negative.
(2) Whether the First Party company proves that the Hindustan Lever Mazdoor Sabha has no *locus standi* to represent the employees concerned in the present Reference ?	Negative.
(3) Whether the First Party company proves that the in view of the settlements entered into between the individual Field Force employees and the Company in the years 1996, 1997 and 1998, there is no industrial dispute as defined under section 2(*k*) of the Industrial Disputes Act, 1947 in existence ?	Negative.
(4) Whether the First Party company proves that the alleged purported individual settlements relied upon by the company are legal and valid within the provisions of the Industrial Disputes Act, 1947 ?	Affirmative.

(5)	Whether the First Party company proves that the issues raised by it with regard to the maintainability of the reference on account of the alleged settlements are barred not by the principles of res-judicata ?	Negative.
(6)	Whether the Second Party Union proves that the contentions of the company with regard to the status of the Field Force employees conferred in the reference and the representative character of the union are barred by the principles of waiver/ estoppel ?	Negative.
(7)	Whether this Tribunal can make any Award in terms of the alleged individual settlements for the years 1996, 1997 and 1998 ? If so, what award ?	Yes. In terms of settlement of 1997 ?
(8)	Whether the Award can be made in respect of the employees who have already signed the settlement with the company ?	
(9)	Whether the Second Party Union proves that the alleged termination of the 1957 Agreement *vide* notice dated 3rd February 1997 is a valid termination under Sec. 19 of the Industrial Disputes Act, 1947 ? If so, whether the same has been replaced by any legal, valid agreement/settlement ?	Negative.
(10)	Whether the Second Party union proves that the demands contained in the schedule to the order of reference dated 3rd May 1997 are justified ? If so, what relief ?	Affirmative.

Reasons

15. Before referring to the merits of the matter, it will be just to make some expert remarks regarding the existence of settlement of 1957 and its binding effect on both, even on today. The challenge made by the company to the validity of the reference is both way *i.e.* Hindustan Lever Mazdoor Sabha has no *locus standi* as having no force of the members and secondly, the Field Force employees are not the workmen. These two points as being agitated by the company, cannot be resolved straight way without referring to the effect of 1957 settlement, because there are some agreements that the company will not raise the issue regarding the status of Sabha being recognised by the company as the representative union and also that of the Field Force employees are the workmen or not. The proposition as envisaged by both the parties indicates that even in the situation of entering into subsequent settlement with the employees, the independent existence of 1957 settlement was kept in tact and that the company emphasised contrary that the 1957 settlement has been validly terminated and has become a defung charter of in other words, it is a non-east entity. All these aspects squarely goes to the root of the matter and, therefore, such anomoly has to be contrated first before referring to the other aspects.

16. The company while opposing the reference, has referred to the individual settlements entered into with the Field Force employees and asserted that no industrial dispute now exists. Construing these averments and the status of Sabha and the concerned workmen, as being raised, and that the agreement of 1957 has been validly terminated with effect from 3rd April 1997 by a notice dated 3rd February 1997. The said agreement of 1957 according to the company, has been replaced by the settlement of 1997 onwards. Inspite of these averments, a reference has been made by the appropriate Government holding that there is an industrial dispute, barring the contention raised by the company. Therefore, the nature of 1957 settlement, will have to be looked into because the letter correspondence in between the company and Sabha are being treated as settlement and therefore, a recourse will have to be taken of both, the letters, which has also been taken into consideration by Hon'ble Apex Court in the year 1984.

17. By virtue of letter dated 24th January 1957, the company has recognised the Sabha as the representative union for all sections of Field Force employees all over India and also refers to the agreement, to treat all the matters relating to wages, salaries and conditions of service on all India basis and not on regional basis, as far as Field Force employees are concerned. The third clause in the said letter points out that if Sabha intends to refer the matter for conciliation, it can refer it at Mumbai and the Award given by the Tribunal will be applied to the Field Force employees all over India.

18. Hon'ble Apex Court while giving the Award of 1984, have referred to the two distinct awards of Industrial Tribunal Delhi and of Maharashtra given by Justice Chitale being Reference (IT) No. 203 of 1970. In para 24 of the Award, it is observed that "since the agreement of 1957 unquestionably emerges that the employer till the present reference never raised even a whisper that the agreement was not a conclusive agreement, or that it was inchoat-one, left hanging at the stage of negotiations". These observations refer to the Association of the company in ascertaining the nature of 1957 settlement. Hon'ble Apex Court has negatived the observations in para 27 on page 399 and has held that there is conclusive binding agreement between the parties neither repudiated nor terminated till today which provides that the employer on its part will not contest the status of the membership of the Field Force employees including the Salesmen employed by the company as workmen within the meaning of expression in the Act. Even in para 29, the binding effect of the agreement of 1957 by virtue of the three letters is held to be binding. Therefore, the nature of agreement of 1957 has been upheld by the Hon'ble Apex Court, the effect of the same will be of having its binding effect on both. This was the position of 1984 when the award came to be passed by Hon'ble Apex Court.

19. Referring to this background, the Industrial Court Mumbai in Complaint (ULP) No. 751 of 1984, held that the Respondent company has followed Unfair Labour Practice witnin the meaning of item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act. The question of termination of Award has been considered referring to the observation of Hon'ble Apex Court in C. A. No. 1865 of 1982 dated 5th January 1984 reported in *1984-I-LLJ-308*. By the said Award, Hon'ble Apex Court held that the correspondence between the company and Sabha comments to agreement between the parties and also held that the said agreement has not yet been terminated. In Complaint (ULP) No. 751 of 1984, my predecessor has held that the notice of termination given by the company is not valid, as undisputedly two months notice has not been given. Besides, it is pointed out that even after the termination, the agreement has not been replaced by any other agreement so far. Therefore, averments of termination of 1957 agreement has not been upheld. On the contrary, the effect of the said agreement is held to be continued until replaced by any other settlement or agreement. So far as replacement by subsequent agreement is concerned, the issue needs a separate discussion to find out as to whether the said subsequent agreement can be said to be a valid replacement to the earlier agreement. At this juncture, the fact which needs to be reckoned is that of not terminating the 1957 agreement by resorting to legal steps.

20. In pursuance of the above position of fact, it is transpired that the Appeal which was preferred against the order of the Industrial Court was considered by Hon'ble Apex Court in Civil Appeal No. 8898 of 1996. While referring to the observations of Hon'ble High Court, Hon'ble Apex Court has referred the judgment of *1984-I-LLJ-308,* and thereafter considered the findings of the Industrial Tribunal and upheld the same, which were previously being set aside by Hon'ble High Court, Bombay. By the said order, the findings of the Industrial Court were restored. The repurcations of restoring the finding of the Industrial Court, therefore, in my view, is nothing but reiterating the observation of Hon'ble Supreme Court that 1957 agreement has not yet been validly terminated. In other words, the binding force of 1957 agreement, therefore, has been upheld by the Hon'ble Apex Court in a subsequent matter which has confirmed the findings of the Industrial Court.

21. Upon this situation, the admitted position is that of a notice of termination given by the company on 3rd February 1997 giving its effect after 3rd April 1997. By virtue of this proposition, the question arises as to whether 1957 agreement can be said to have been terminated validly in the year 1997 and whether intermitant agreements entered into by the company with the individual employees whether will have any binding effect ?

22. Section 19 of the Central Act deals with the period of operation of settlement and Awards. Sub-section (*2*) of Section 19 lays down that :—

> "Such settlement shall be binding for such period as is agreed upon for a period of six months and shall continue to be binding on the parties after expiry of the period aforesaid until expiry of 2 months from the date on which the notice in writing of an intention to terminate the settlement is given by one of the party to the other party or parties to the settlement."

23. The essential criteria, therefore, for continuation of settlement or termination of the settlement is by expressing an intention by notice to be given by either of the parties to the previous settlement. Till then the terms of settlement are held to be in operation and also of having its binding effect. The terms of settlement continue to govern the relations between the parties after the notice of termination and till the expiry of period of 2 months. Thereafter only, the settlement is replaced by a valid contract or called between the parties. If, therefore, a party intends to terminate the settlement on expiry of the period specified in Sub-section (*2*), it has to give notice of its intention to terminate the settlement, 2 months prior to the expiry of such period. The notice terminating the settlement can, therefore, be given even before the actual expiry of the period of operation of the settlement is specified in it.

24. It has been vehemently submitted on behalf of company that the Hon'ble parent High Court in Writ Petition No. 2313 of 2000 in between the same parties have decided the point in the order passed by this Tribunal, below application Exh. U-141 and pointed out that the effect of 1957 settlement is non-east. However, Hon'ble His Lordship in para 12 has observed that the Tribunal might decide the question of validity of termination of 1957 settlement and referred to the point that the Field Force employees have clearly accepted validity of the said settlement entered into by them, as according to these employees, the agreement was validly terminated and thereby Hon'ble His Lordship has given a ruling that the Tribunal should decide the issues which are pending between the union and the Petitioner company in respect of the other workmen represented by the union. By virtue of these observations, it is laid down that the validity of termination now cannot be a question for consideration.

25. I have referred to the affidavits filed by the Field Force employees and that their submissions regarding setting their disputes is concerned, the same has also been challenged by the union by pointing out that the affidavits of more than 500 Field Force employees are being sworn in, on one of the same day and that the wording of each of the affidavit is exactly similar.

26. These contentions are specifically being negatived by Hon'ble His Lordship in the above referred writ petition. The eloquent observations in para 7 that "the union is also aware of these settlements. There is no allegations of force and coercion. There is no case made out by the union that this settlement is in any way unfair or illegal. When all the Field Force employees have signed the settlement year after year for 5 years and have enjoyed benefits under the settlement, the charge of unfairness as regards the settlement will not stand for a minute". Considering these observations for the purpose of validity of the subsequent settlement and the existence of 1957 settlement is concerned, I am of the view that it is abundantly clear by such observation that the allegation of the union is nothing but a futile attempt.

27. So far as swearing of affidavits are concerned in para 5, Hon'ble Lordship has observed that "this class of Field Force employees is not an illiterate class to sing on doted lines. They have signed these settlements continuously for 5 years and they have been receiving the benefits under these settlements for such a long period without any grievance or complaint against the company. These employees also found a part of the union in the above reference for adjudication of charter of demands. Their demands have also been included in the charter of demands for adjudication". Shri Choudhary Ld. representative by taking this Court through these observations in between the lines, has ultimately submitted that the reference does not survive and the same has to be disposed of. I have found that his submissions to that regard for disposing of the reference are premature. The observation of Hon'ble His Lordship does not spell out that the entire reference does not remain. On the contrary, Hon'ble His Lordship has reckoned various issues framed by this Tribunal and expressed that the Tribunal should decide all the issues and thereby Tribunal can come to its own conclusion. This position of fact, therefore, has to be reiterated when the oral evidence will be considered but the fact of validity of 1957 settlement, therefore, remains because the adjudication of demands pursuant to the issues framed by this Tribunal is ordered by virtue of observation of Hon'ble His Lordship. I have referred to these observation at this stage so that the point has to be made clear that the existence of 1957 settlement is still in process for consideration and that the issues to that effect needs to be considered.

28. It appears from the submission of both the sides that repudiation and termination of 1957 settlement was considered in view of the observation of Hon'ble Supreme Court which has confirmed the order of this Tribunal in Complaint (ULP) No. 751 of 1984. Before referring to the relevant paras in the judgment of my brother Judge Shri Baj, we will have to concentrate on positive fact that the company has contested the very status of these workmen but simultaneously has dealt class of these workmen and entered into with them a settlement within the meaning of Section 2(p) of the I. D. Act. The situation, therefore, is very clear that the company has treated the Field Force employees as liable to be negotiated and entered into settlement with them and the matter has been referred to the Tribunal for adjudication. So far as the demands raised in the charter are concerned, the company is challenging the status of the employees. This anomolous position is also required to be taken into consideration as regards to the rival contentions of the parties.

29. It has been clarified by learned representative Shri Choudhary by reiterating the fact that the order passed by the Industrial Tribunal presided over by the Judge Shri Baj has been confirmed and thereafter the company is in process of entering into the settlement from 1975 onwards till 1995 which were in all 20 in numbers. The very aspect has been challenged by Sabha contending *inter alia* that the subsequent settlement independently entered into with the Field Force employees by the company was unilateral action without taking Sabha into confidence and that those settlements were less beneficial to the employees. In view of this position, if at all this Court will come to the conclusion that 1957 settlement is still subsisting, then the subsequent question as to whether Field Force employees are the workmen or not, will have to be construed and thirdly, if they are the workmen, then the subsequent whether Sabha has a proper cause to represent these employees will also be required to be considered. These three points will have to be resolved by the subsequent discussion.

30. The basis of such discussion lies in the earlier discussion made by me to come to a conclusion as to whether the 1957 settlement is still subsisting or not and upon carefully considering the factual aspect in consonance with the observation of the Hon'ble High Court and Hon'ble Apex Court, I have found that Sub-section (*2*) of Section 19 of the I. D. Act squarely lays down that unless the earlier settlement has been replaced, by another settlement, the earlier settlement cannot be held to be terminated. Obviously, the fact cannot be brushed aside that even after the order of then Member, Industrial Court Shri Baj, the company had given a notice of two months regarding termination of 1957 settlement from 3rd April 1997. It is also cannot be brushed aside that even after the termination, no other agreement has been replaced or entered into. Whatever subsisting by individual agreements are entered into are admittedly prior to 1997 or prior to so called legal and valid notice given by the company on 3rd February 1997. In the result, 1957 settlement has to be held as in force on the date when the notice of termination of the said settlement came into effect *i.e.* on 3rd April 1997.

31. The another contention raised by learned Advocate Mrs. Doshi that 1957 settlement was a collective and bilateral agreement entered into in Mumbai and accordingly, the subsequent settlements were arrived in the years 1957, 1961, 1964 and 1971. Those settlements were between the head office of the management and the Sabha pertaining to the service conditions of the Field Force employees. Therefore, the 1957 settlement was all India settlement and it cannot be replaced at regional level. This contention on behalf of the Sabha appears to be by rendering a gestrue towards the individual settlement entered into by the company with Field Force employees. However, in view of the earlier discussion, this Court will have to consider the variasity of those settlements *i.e.* individual settlements under Section 2(*p*) as admittedly being entered into prior to 1997 *i.e.* the date on which a notice of termination of agreement of 1957 came to effect. Therefore also I do not intend to indulge into the said aspect at this stage to verify as to whether the settlements were on all India basis or regional basis. The discussion to what effect may come in the subseqnent averments.

32. Inspite of that the order of the Industrial Court has been confirmed by the Supreme Court. However, company reiterates that since there are wage-revision for about 20 times from 1975 onwards and since Hon'ble Apex Court in its 1984 judgment observed regarding irrelevant pleadings, about the challenge to the status of the Sabha and the validity of the earlier settlement, as irrelevant pleading, I am of the view that the entire situation even at the time of referring the referance to this Tribunal, 1957 settlement was subsisting. Therefore, once this conclusion is drawn, then the terms in 1957 settlement will be binding on the parties till the said settlement has been replaced. I have gone through eleborately, the discussion so far as the existence of 1957 settlement is concerned to enable me to consider the eleborate evidence and discussion pertaining to the locus of the Sabha and status of the workmen. Therefore, now I am concentrating for the discussion on each of the issues as being observed by Hon'ble parent High Court in Writ Petition No. 2313 of 2000.

33. *Issue No. 1* :— The reference order pertains to the Field Force employees. They are said to be the Territory sales Incharge and Sales Officers. They were being represented by the Sabha and the settlements were signed in the years 1957, 1959, 1961 etc. till 1971. At the outset, it can be said that since the company has entered into settlements pertaining to the service conditions of these Field Force employees, then when the reference is made, their status as a workman now cannot be agitated or raised. Besides, in view of the earlier discussion held in the above paras, it is patently made clear that not only the company has discussed with the Sabha till 1975 so far as service conditions of these employees are concerned, but even thereafter, keeping aside the Sabha, the company has dealt with these Field Force and have got signed the settlements from them individually. The volume of record as placed before me is an indicative fact that each of Field Force employees are satisfied themselves with the terms and conditions entered with them by the company. It is apparently clear that the employee himself has taken the decision for settling the service conditions and thereafter accepted the same. If these are the salient features of the past history, then the question for asserting the status of the workmen normally should not have been arisen. However, I am required to deal with all the issues as being raised. I am dealing with the issue eleborately.

34. For discussion on the status of the workmen, it is needless to reproduce the exact text of Section 2(*s*) of the Industrial Disputes Act but it will be just to concentrate the nature of work these Field Force employees are doing. Hon'ble Apex Court in judgment reported in *Workmen, Hindustan Lever Ltd.* V/s. *The Management, Hindustan Lever Ltd., 1984-I-LLJ-388* has specified the nature and place of work or paraphenia of Field Force employees by pointing out that :—

> " The Field Force Unit is a separate unit known as Force Unit that they are liable to be transferred anywhere in India. That Field Force Unit is controlled by company's head office in Bombay, that it was agreed between the company and H.L.M.S. Bombay that all the matters relate to Field Force Unit would be dealt with by both the parties at Bombay on all India basis and if no settlement is reached, the dispute shall be raised in Bombay in accordance with the Industrial Disputes Act."

It is seen from record which is put up before the Court, that Field Force employees are spread across the country and located in 4 branches.

35. The evidence on record as led on behalf of the company through the Area Sales Manager also expresses that the nature of work of these Field Force employees is of sale promoting nature. The major part of the evidence led through these witnesses is on the settlements entered into by Field Force employees individually with the company. The part of the evidence can be considered at a later phase. Therefore, the company is relying heavily on number of sales promoting agencies are not the workmen within the meaning of Section 2(*s*) of the I. D. Act, 1947. Learned representative Shri Choudhary has also relied on catena of judgments pointing out on the points. Besides he has pointed out the various Awards wherein the present parties are also the parties, in these matters. As against this, the Sabha is squarely relying on the positive assertion that 1957 settlement is still subsisting as not being legally terminated.

36. On the above averments, the fact matrix visualises from the record before the Court points out that the company itself has entered into individual settlement under Section 2(*p*) with these Field Force employees. Besides, Hon'ble His Lordship while giving a rule in Writ Petition No. 2313 of 2000 has observed in para 5 that :—

> " That these employees also form a part of the union in the above reference for adjudication of charter of demands. Their demands have also been in the charter of demands for adjudication. They have made an application individually on affidavits and submitted to the Tribunal that as far as they are concerned, they have settled their demands separately and individually by signing separate and individual 2(*p*) settlement ..... ."

In para 6 of the observation, his Lordship has pointed out that :—

"Up to this point or juncture, both has agreed that Field Force employees had been signing individual 2(*p*) settlement from 1996 onwards and they had signed settlement for the years 1998, 1999, 1999-2000 and therefore, there was no sense in insisting for adjudication of demands including the point that they did not fall within the definition of Section 2(*s*) of the Industrial Disputes Act."

In careful abidance of this observation, in my opinion, it is apparently clear that this Court has come to the conclusion that till 1997, The settlement of 1957 was not validly terminated if the situation is like that, then the challenge to the status of the workmen in the above said conclusion as well as on the abservation of Hon'ble His Lordship in Writ Petition No. 2313 of 2000, will not lie in the mouth of the company, I need not reproduce the terms of the settlement of 1957, referring to not raising any dispute pertaining to the employees being workmen or not. But even in this situation, it will be just for me to only refer to submissions advanced by the company.

37. So far as the settlement of 1957 through a correspondence entered into by the company with Sabha, the issue of employees being workmen has been conceded. It is the contention of the company that since the Sabha does not represent the entire Field Force as seen from the record since 1969, the Sabha is not representing western region after 1975, it does not represent the entire Field Force across the country. To construe this proposition as envisaged by learned representative Shri Choudhary, we will have to come back again to the terms of a correspondence entered into between the company and the Sabha. Admittedly the terms therein are affirming the conclusions that the company is espoused from raising any dispute regarding the employees being workmen or not. In the situation if for the sake of arguments, it is considered that the earlier settlement of 1957 has been terminated on 3rd April 1997 and no other settlement has replaced, the earlier then the terms of the earlier settlement will have to be considered having its binding effect on the parties covered under the settlement. In the same context, when the company asserts that by signing the settlement from 1996, the Field Force employees ceased to be workmen is devoid of any substance. If the company itself is emphasising that 1957 settlement was brought to an end by giving 2 months' notice, then the earlier settlement prior to the date of termination will not have any sanctity. Therefore, merely because the settlement is signed, the earlier contention as mentioned in 1957 settlement cannot be washed out.

38. Learned representative Shri Choudhary has reiterated his submissions referring to the observations of Hon'ble Their Lordships of Hon'ble Supreme Court in a case of *H. R. Adhvantha* V/s. *Sandoz Limited, AIR 1994-SC-2608.* The question as to whether the Medical Representatives are the workmen within the meaning of Section 2(*s*) was before Hon'ble Their Lordships for consideration. Referring to the work rendered by these Medical Representatives it is observed in para 34 that the work of promotion of sales of project or services of the establishment is distinct from the independent types of work covered by the said definition of workmen. Hence, the contention that the Medical Representatives were employed to do skilled work within the meaning of said definition has to be rejected and in para 35, it is observed that :—

"The service conditions and their protection are not fundamental rights. They are creatures either of the statute or of contract of employment. What service condition would be available to particular employee, whether they are liable to be varied and to what extent, are matters governed either by the statute or the terms of contract. The legislature cannot be mandated to prescribe and secure particular service conditions to the particular set of employees."

In a case reported in *All India Reserve Bank Employees' Association and another* V/s. *Reserve Bank of Iindia and another, 1965-II-LLJ-175* Hon'ble Their Lordships have observed that :—

"Amending Act of 36 of 1956 introduced in the definition of workmen in Section 2(*s*) of the Industrial Disputes Act, 1947, among the categories of persons already mentioned in the definition, person employed to do, supervisory and technical work".

In a case of *S. K. Verma* V/s. *Mahesh Chandra and another, 1983(4) Supreme Court Cases-214* Hon'ble Apex Court has observed that :—

" It is trite to say that Industrial Disputes Act is a legislation intended to bring about peace and harmony between labour and management in an industry and for that purpose, it makes provision for the investigation and settlement of industrial disputes. It is, therefore, necessary to interpret the definitions of 'industry', 'workman', 'industrial dispute', etc. so as not to whittle down but to advance the object of the Act. Disputes between the forces of labour and management are not to be excluded from the operation of the Act. the Parliament and restricted meanings to expressions in the Act. The Parliament could never be credited with the intention of keeping out of the purview of the legislation small bands of employees who, though not on the managerial side of the establishment, are yet to be denied the ordinary rights of the forces of labour for no apparent reason at all. In Workmen *Vs*. Indian Standards Institution, this Court had occasion to point out (SSC Para 1, p. 851 : SSC (L & S) p. 20), it is necessary to remember that the Industrial Disputes Act, 1947 is a legislation intended to bring about peace and harmony between management and labour in an 'industry' so that production does not suffer and at the same time, labour is not exploited and discontended and therefore, the tests must be so applied as to give the widest possible connotation to the term 'industry'. Whenever a question arises whether a particular concern is an 'industry', the approach must be broad and liberal and not rigid or doctrinair. We cannot forget that it is a social welfare legislation we are interpreting and we must place such an interpretation as would advance the object and purpose of the legislation and give full meaning and effect to it in the achievement of its avowed social objective. So we adopt a pragmatic and not a pedantic approach and we proceed, in considering the question whether development officers in the Life Insurance Corporation are workmen, to first consider the broad question on which side of the line they fall, labour or management and then to consider whether there are any good reasons for moving them over from one side to the other."

39. Referring to the rule laid down by Hon'ble Apex Court while construing these self promoting agent as the workmen or not, the company has relied on the observation of Tribunal presided over by Shri Chitale who has held that these Field Force employees are not the workmen. In pursuance of the observation therein, it is necessary to point out that Hon'ble Supreme Court in its judgment of 1984 and of 1996 have considered the validity of 1957 settlement. therefore, the settlement when held to be in force, the terms thereunder are to be abided by the parties. Under this principle, once principaly, it is agreed by the company that it will not raise the issue of Field Force employees being the workmen or not, it is difficult to assert as to how the issue needs to be adjudicated again. The principle of estoppel, therefore, squarely applied and under that principle, the issue has to be resolved.

40. *Issue Nos. 2 and 3* :— The reiteration of the company is that the Sabha has become defung union on account of no member of Field Force have now remained with the Sabha. My attention was again invited to the 20 salary revisions comprising 2(*p*) settlements entered into with individual members of Field Force employees. By virtue of this proposition, the locus

standi of Sabha has been challenged at least for raising a dispute on behalf of Field Force employees. At this juncture, it has to be borne in mind that though repeatedly the company has emphasised that the members of Field Force employees have filed their affidavits disconcerning themselves with the Sabha, the company itself is admitting the position that some of the member of Field Force employees are remained to be away from those who have filed their affidavits expressing their desire to get satisfied with the individual settlements with the employer. It is evident by the observation of Hon'ble our High Court also that some of the members of Field Force employees are still waiting for their turn to come after the adjudication process, as expected from this Tribunal. In the circumstances, merely 100 of Field Force employees have settled their dues will not necessarily make the Sabha as defung union because the union is still holding filed so far as remaining part of the Field Force employees are concerned.

41. Another salient feature of the submission on the thrash-hold that the reference order as made by the appropriate Government dated 3rd July 1997 envisages that there is an industrial dispute between Hindustan Lever Ltd. and its employees who are represented by the Hindustan Lever Mazdoor Sabha. The company if at all is agitating the very locus of the Sabha when the matter has been referred to this Tribunal, then the company could have challenged the said order of the appropriate Government before the Hon'ble High Court. It is contended by the learned representative Shri Choudhary that the objections were raised before the appropriate Government prior to making the reference. However, these were not being considered. It is unfortunate that all those papers which were before the Conciliation Officer are not being tramitted to this Court. However, it is a cardinal principle that the Tribunal is duty bound to adjudicate upon the demands mentioned in the schedule and cannot go beyond the reference order. The grievance if at all is raised by the company or the second party whatever case might be. In the order of reference, the same can only be challenged in the Hon'ble High Court. This feature clearly indicates that the company has chosen to keep silence even after making the reference and therefore, I have found that the locus of the Sabha should not have been challenged by the company before this forum.

42. The learned representative Shri Choudhary has brought my attention towards settlement with members of Field Force who have ratified that Sabha does not represent them end of valid termination of 1957 settlement and the members expressed their desire that the company should not negotiate on 1973 charter of demands with the Sabha. Shri Choudhary learned representative has further relief on oral evidence of Shri Ramnathan (copy submitted) admitted that the Sabha has no occasion to represent the case of members of Field Force employees in between 1975 to 1995 and further practically all Field Force employees have entered into settlement. While considering his submissions, I have referred to Section 36(*1*)(*a*) of the Industrial Disputes Act which leys down that :—

(1) "A workman who is a party to the dispute shall be entitled to be represented in any proceeding under this Act.

(*a*) (Any member of executive or other office bearer) of a registered trade union of which he is a member."

Therefore, when the appropriate Government has held that there is a dispute in existence and has sent the matter for adjudication by assertion that the workmen of the Sabha are headed by Sabha. Therefore, to ascertain the locus, in my view, the membership is the main criteria and therefore, the verification partaining to the membership has been resorted to. In this situation, the allegation of the company that without resorting that process, the Conciliation

Officer made a reference under Section 10(*1*)(*d*). In my opinion, the decision taken by the Conciliation Officer was considering the material available before him on record and therefore, the reference was made and the available opportunity was to adopt the mode as stated earlier. There exists, therefore, the responsibility to escertain the membership and to lead appropriate evidence to that effect. Accordingly, the evidence has been led and Exh. UW-3 Shri Kuldeepsingh who has enrolled himself as a member, though in the year 1997, even then the fact remains that Sabha has still membership. The list of employees of Sabha is on record *vide* Exh. O-6, the documents are called from the office of the Registrar of Trade Unions, Calcutta and Mumbai. The Correspondence between the Registrar of Trade Unions dated 26th April 1999 Exh. O-8, the existence of the Sabha registration issued by the Registrar of Trade Unions and the forms filled in by the trade union exercising the existence of Sabha, though not reiterates that even on the date of reference, the Sabha has a status of the Registered and recognised union.

43. The scrutiny of the factual aspect has been made by this Tribunal to affirm the earlier observations that 1957 settlement was and is still subsisting and therefore, will have to be reckoned to construe the position of the registered union. The union, therefore, still holds water to agitate the cause for members who were once upon a time proceeding under the guidance of the union and nowsome of them walked out and directly entered into settlement. This anomolous position, in my view, will not change the status of the union.

44. Another aspect of the matter is that Field Force employees have filed their affidavits and that they have left their connections with the Sabha by their evertact of entering into the settlement directly with the company. By virtue of this aspect, my attention was brought to the application filed by Sabha at Exh. U-141 wherein it is claimed to pass an award. These submissions, therefore, have been taken for consideration by the company reiterating that once an award is made in respect of the settlement directly entered into by Field Force employees including their union, then the status or locus of the union will not stand.

45. Considering these submissions referred earlier, I have pointed out that the Sabha cannot loss its representation however, the learned representative Shri Choudhary has brought my attention towards the evidence led before the Court especially the evidence of Shri Ramnathan wherein he has admitted that there was no occasion for the Sabha to correspond with management in relation to any matter connected with the Field Force employees. He has also brought my attention towards the evidence of the other witness including Shri Venkatesh Exh. CW-10 who has pointed out that during the years 1980 to 1991, he was member of Field Force and was never member of Sabha. Even from the year 1997, Field Force employees were not represented by Sabha at any point of time. I have referred to the entire evidence of the witnesses. The evidence recorded by the Manager of the company appears to be of representing the particular areas and region. Besides this evidence of other witnesses at Exh. CW-3 to Exh. CW-17 have categorically mentioned about their disconcern with the Sabha. The evidence has also been considered by referring to the fact as to whether the union has ever challenged the part of the evidence that Field Force employees were not being represented by the Sabha.

46. In the circumstances, the observations of Hon'ble parent High Court in Writ Petition No. 2313 of 2000 specifically points out that the union was fully aware of the earlier settlements entered into and that those employees are not represented by the Sabha. It is true that these observations are by concerning to the Sabha's making a submission for passing an *ex-parte* award. However, the principle in giving such observation has to be honoured.

47. Considering all these factual aspect, it is very clear that individual employees for whom the agitation is being made, themselves have filed the affidavits and signed the settlement. For their such act, Hon'ble His Lordship in Writ Petition No. 2313 of 2000 has made specific remarks which has been reproduced in the earlier discussion. Therefore, also, initial fact remained, that when 1957 settlement is held to be still subsisting, then the terms thereunder are to be taken into consideration referring to the doctrine of estoppel.

48. It has rightly been pointed out by Advocate Mrs. Doshi that as nothing prevented the company from terminating 1957 settlement in 1975 itself, or thereafter prior to 1996 or 1997 individual settlements. My attention was also invited towards the observation of Hon'ble Apex Court in the year 1984 that a falidity of 1957 settlement has never been disputed by the company on account of Sabha's having appropriate representation or even at the time of deciding the reference by Shri Chitale Tribunal in Reference (IT) No. 203 of 1970. While pursuing the papers on record, I have referred the affidavits filed by the Legal Director of the company which has been filed before the Hon'ble Supreme Court in 1997 wherein it is admitted that Sabha continued to be the representative union with the fact of binding force of 1957 settlement. This particular aspect also reiterates my earlier conclusion of Sabha's having a locus prior to the order of reference. At this juncture, the documents produced by the Registrar of Trade Unions before the Court which were being called by the company squarely contains the subscription receipts of 1996 and there is a silence on the part of the company so far as validity of those receipts are concerned. The material which was the part of Misc. Application (ULP) No. 27 of 1997 which was before the two Judges of the Industrial Court indicates the form-I of Trade Unions Returns for the year 1997 showing 50% to 60% membership of all India Field Force and other employees in the head office, branches and Gaziabad factory. These documents, therefore, reflect the clinching circumstances showing the possibility of having the membership of the Field Force employees with the Sabha.

49. Hon'ble Supreme Court has made it clear that Reference which is otherwise valid does not become incumbent simply because it is mentioned therein that the workmen will be represented by such and such union in the workmen will be represented by such and such union in the dispute. The words "as represented" by the Hotel Workers Union was for the sake of convenience so that the Tribunal may know to when he should give notice when proceeding to deal with the reference. However, did not preclude the workmen if they wanted to be represented by any other union to apply to the Tribunal for such representation or even to apply for being made parties individually. by virtue of this observation, if ade applicable in the instant case though deeming fiction cannot be made applicable. It can be considered that the company has agreed not to challenge the representation of Sabha.

50. The record as put up before me refers to the Award given by Shri Chitale in Reference (IT) No. 203 of 1970 and the issue pertaining to the question of Bombay Branch of issue of all India level has been discussed. Hon'ble Apex Court in the observation is C. A. No. 1865 of 1982 dated 5th January 1984 reflects the positive fact of company's not disputing the representative capacity of the Sabha. In the same Appeal, the issue pertaining to the employee from Delhi Region was discussed and it was held that the Sabha has denied to be a representative union having binding force of 1957 settlement.

51. It is the first and foremost contention that the Sabha has given up the issue regarding the existence of industrial dispute in view of the settlement entered into in the years 1996, 1997 and 1998. It is reiterated that there is an award with regard to 1998 and 1999 settlements which are inclusive of 1996 and 1997 settlements. While carefully considering the submissions

of learned representative Shri Choudhary, it appears that whatever wage demands are referred to are to be presumed to be settled under the award referred above. It that aspect is to be reckoned, then various wage revision from 1975 are also said to be inclusive of the settlements and the Award of 1998-99. This line of argument of learned representative Shri Choudhary leads to the end of survival of industrial disputes. Apparently, it is clear that the acceptance of the Field Force of the settlement in the year 1996 reflects their gesture that none of them want that the present reference be pursuaded. Having regard to these submissions, my attention was brought to para 6 of the observation of Hon'ble His Lordship in Writ Petition No. 2313 of 2000. It is observed that since the Sabha has prayed for an *ex-parte* award in case of these who had made the application by way of affidavits in 1998-99. The concious of the Sabha has been brought to the notice by observation that Sabha was knowing it full by entering into various settlements by Field Force employees and thereby knowing it full well that those have not remained to be the members of the Sabha.

52. The Sabha in pursuance of the submission, has raised an issue of the effect of such settlements at regional level and against setting the issue on all India basis. We will deal with this aspect at a subsequent phase because we cannot proceed ahead without referring to the observation of Hon'ble Apex Court in C. A. No. 8898 of 1986 by which Hon'ble Their Lordships have set aside the judgment of Hon'ble High Court and restored the judgment of the Industrial Tribunal. The Contempt Petition which was initiated was ultimately dismissed being not pressed. However, the copy of the judgment with Exh. U-5 in the Contempt Petition has to be curserarily looked into because it was moved againt the order passed in Misc. Application (ULP) No. 27 of 1997 presided over two Judges of the Industrial Court, Mumbai wherein it is resolved that the company has no followed the order of the Industrial Court *i.e.* Shri Baj Award. The Contempt Petiton was ultimately dropped on account of initiating the proceeding under Section 50 of the relevant Act. The Review Petition was also dismissed by the Hon'ble Supreme Court. The prominent efforts which the company has resorted to is of issuing a notice of terminating 1957 settlement. In response to the notice, obviously existence of earlier settlement of 1957 is accepted. Therefore, whether a dispute survives or not will also have to be construed that till 3rd April 1997, the existence of 1957 settlement can safely be held, then the question of not having any dispute in 1997 cannot remain because Hon'ble Apex Court have observed in its 1984 judgment that if the agreement is subsisting, no other contention regarding recognition of the Sabha can be raised and even if it is raised, it has to be ignored as an irrelevant pleading. The event of these observation of Hon'ble Supreme Court, it is apparently clear that the issue raised about the existence of dispute will have to be ignored besides Hon'ble our High Court has also expressed that even in the given circumstances when the issues are framed, the Tribunal will have to give finding on all such issues. In the light of these observations, I am to proceed to consider the nature of "dispute" by resorting to proposition under Section 2(k) of the Industrial Disputes Act. Section 2(*k*) of the Industrial Disputes Act lays down that :—

> "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

The terms of definition squarely lays down that "industrial dispute" comes into existence when the employer and the workmen are at verience and the "dispute or difference" is connected with the employment or non-employment etc. A "dispute" or "difference" arises when the demand is made by the workmen on the employer and rejected by him. Hence, "industrial dispute" cannot be said to "exist" unless and until the demand is made by the workmen or the workmen or employer or it has been rejected by him. The Act no where contemplates an "industrial dispute" would come into existence in particular or specific or prescribed manner nor is there any particular or prescribed manner, the refusal could be communicated.

53. An "industrial dispute" need not be "conflicted of interests" or economic dispute. It may also be a conflict or rights or the legal dispute. It has been more specifically specified by Hon'ble Apex Court that a dispute raised by single workman cannot become an "industrial dispute" unless it is supported either by his union or in absence of union by substantial number of workmen. In other words, it is only a collective dispute that can constitute an "industrial dispute". The collective dispute, however, does not mean that all the workmen have majority of them of the establishment concerned should sponsor and support the dispute. All that is necessary is that a dispute in other in order to become an "industrial dispute" should have a support of a substantial section of the workmen concerned in the establishment. But for this purpose, the employee, who has already been dismissed and whose cause is not in question cannot be taken into account for constituting appreciating Section of the employer's establishment as they are not the members of the employer's establishment at all and cannot be considered as such for the purpose of deciding whether there was any "industrial dispute" or not. In a case of *Bombay Union of Journalists* V/s. *The Hindu, 1961-II-LLJ-434 Supreme Court,* Hon'ble Apex Court has observed that in each case in ascertaining whether an individual dispute has acquired the character of "industrial dispute", the test is whether at the date of reference, the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by an individual workman or by appreciable number of workmen. Therefore, it is further made clear that the definition of "industrial dispute" is not restricted to a dispute between the employer and the recognised majority union, but is takes within its wide sweep in dispute or difference between the employer and the workmen including minority union of workmen which is connected with the employment or terms of employment or conditions of labour or workmen.

54. Therefore, the conclusion of all the discussion will have to be by concentrating on the date of reference. The validity of the reference is to be judged on facts as they stood on the date of reference and not on the date of workmen's dismissal. The crutial days, that on the date of reference the espouse and support of the dispute by the union or the workmen or by an appreciable number of workmen must be present. Corollary to this, was that the subsequent withdrawal or support will not take away the jurisdiction of Industrial Tribunal. Simultaneously, the subsequent support too will convert what was an individual dispute at the time of reference into an "industrial dispute". Therefore, what is essential to cause an "industrial dispute" has been explained by Hon'ble Apex Court in a case of *The Hindu (Supra).* It had to be established that the dispute had been taken up by the union or employees or by an appreciable number of employees.

55. It has to be borne in mind that in a case when there are no workmen at all or all of them become non-workmen either during the pendency or at the time of adjudication, the status of the dispute has to be questioned and it has been explained by the Hon'ble Apex Court if there are no workmen of the category with respect to whom the dispute has been referred, the Tribunal cannot be called upon to prescribe the wage-scales for non-existing workmen nor does it has the jurisdiction to do so. The dispute in this sense must be deemed to have lapsed.

56. Referring to the words used in drafting definition of "person" is not limited to workman. Hon'ble Their Lordships of Hon'ble Supreme Court have in a case of *All India Reserve Bank Employees' Association and Anr.* V/s. *Reserve Bank of India and Anr. 1965-II-LLJ-175* have referred to the word by explaining it as "that word person carry more general meaning". It is laid down thus :—

> "But it does not mean any person un-connected with the dispute in relation to whom the dispute is not of the describe. Though the dispute does not concern in the list, the workmen are entitled to find it out on behalf of non-workmen."

Therefore, while fixing the position of law in this regard, Hon'ble Apex Court has given a dictum that "expression any person" means he need not be a workman but he must be a person in whose condition of employment etc. the workers must be directly or substantially interested or with whom they have community of interest. Having regard to the legal propositions, referred above that the contention of the company that "industrial dispute" which has been referred, are wage demand and those are settled by virtue of the award made in the year 1998 or 1999. Therefore, no "industrial dispute" exists. It has been reiterated that Field Force employees for the years 1996 to 2000 and prior to that since 1975 have been accepting all the revisions in full and final settlement. Therefore, whatever agitations have been raised are unsettled in terms of the settlement while construing these submissions, I have found that the existence of Sabha has been an admitted position since beginning. By virtue of the discussion made earlier by me, the locus of the Sabha has also been considered and it has also been held that 1957 agreement was not validly terminated till 1977. Therefore, the individual settlements of the employees against the existence of the settlement of 1957 having a legal sanction will have to be tested on the facts and legal position. The employees who were supported initially by the Sabha have disconcerned themselves from the association of the Sabha and carry away the rights of the Sabha are to be answered, it is apparently clear that under the notion that there cannot be a settlement against the statute, the effect of individual settlements, therefore, will not be there or in other case also, the Sabha reiterates about Field Force employees who are retired but have not filed any affidavits as all other Field Force employees are still with the Sabha and therefore, whatever wage reforms are being claimed by the Sabha will make "industrial dispute" in tact.

57. The validity of 1957 settlement has upheld in the earlier discussion, atleast till 1997. Therefore, when such settlement has a binding force as a statute, then individual settlements entered into by these employees whether can be upheld ? The question, therefore, can be clarified by referring to the observation of Hon'ble His Lordship in Writ Petition No. 2313 of 2000 wherein Hon'ble His Lordship has observed that "an award pertaining to those settlement could have been made by the Industrial Court. In para 13(a), the question of adjudication of the other demands as other employees have been resolved and held that the question of termination of 1957 settlement cannot come in the way of the Tribunal." Hon'ble His Lordship has also observed that the settlement of 1957 is in the form of letter and there is no clause prohibiting the parties from arriving at such a settlement. Therefore, the termination of 1957 in a manner disclosed and described at para 15 will not come into way of Field Force employees in settleing the matter. On these assertions, the question of validity of the individual settlement entered into by Field Force employees cannot be discussed by this Tribunal.

58. The question, therefore, has to be borne in mind that the adjudication or dispute remained back is admittedly of the other employees and those according to the Sabha who are retired from service during the intermitant period. In that sense, I have held that whatever submissions advanced by the Sabha shall make the "industrial dispute" in tact. With this discussion, I have given my finding to issue No. 3 accordingly.

59. *Issue No. 4* :— In view of the discussion in the earlier paragraphs, it has been clarified by the observation of Hon'ble His Lordship of our High Court in Writ Petition No. 2313 of 2000 about the legality of the individual settlements entered into with the company. The issue, therefore, need not be discussed again but since the points are apparently agitated by both the parties, the evidence on record needs to be considered. The oral evidence led by the company *vide* Exh. CW-10 to Exh. CW-17, the 8 witnesses have themselves asserted that there was no force or coercion. Besides this the observation of Hon'ble His Lordship is very eloquent pointed

out that these Field Force employees are not the illiterate persons and therefore, it cannot be considered that they have blindly singed on the settlements. Besides this fact at a crutial moment, the Sabha has submitted the pursis Exh. U-143 stating therein that the Sabha will not raise issue of the settlement of 1998 and 1999 being vitiated on the ground of force and coercion. These submissions were made without prejudice to all other rights and contentions. By such withdrawal of earlier contention and in consonance with the observation of Hon'ble His Lordship in Writ Petition No. 2313 of 2000 para 7 and 15, the legality and validity of the settlement has to be upheld. Besides this, the company has filed an application Exh. C-235 referring to the earlier application of Sabha Exh. U-141 dated 19th July 2000. The averments therein are reproduced and it was contended that Sabha is accepting the validity of the individual settlement. The order by this Tribunal below Exh. U-141 dated 22nd September 2000 has been reverted by Hon'ble His Lordship in Writ Petition No. 2313 of 2000. This situation also confirms in my mind basically Sabha has no grievance about the legality and validity of the settlement entered into with the individual employees who have also filed their respective affidavits relinquishing their concern with Sabha. Therefore, while dealing with the issue, the said submissions of Sabha as well as observation of His Lordship cannot be overlooked.

60. The Sabha in the situation has attacked on these settlement referring to the points that these settlements are entered into at various branches but those branches are not before the Court and head office is only before the Court. Therefore, my attention was attracted towards the observation of Hon'ble Apex Court that the head office was the employer and not the branches so far as these Field Force employees are concerned. The evidence before the Court indicates that the settlements were prepared by the head office and therefore, it is submitted that the company at this juncture is precluded in saying that the settlement entered into in branches are the valid settlement.

61. To construe this proposition, the evidence of Shri Sohoni who was incharge of the Western Region has to be looked into by specifying that he was sitting in the head office while discharging the duty. Shri Sohoni has signed on the basis of Power of Attorney. I have also referred to the oral evidence of Exh. CU-4 Shri Vikramseth who is working as Regional Manager for the Northen Region. He has explained the situation when the settlements under Section 2(p) were signed in the years 1996 to 1999 without intervention of the Sabha. Much weight seems to have been given so far as authority of appraisal of the work of Territorial Sales Incharge and the Area Sales Officer etc. and also on the point of consequences of not signing the settlements by these Field Force employees. Especially clauses 8 and 10 in the Power of Attorney have been concentrated to point out that the act which was done was not the commercial transaction. Shri Sohoni is required to do specifically. Therefore, referring to clause 10, it has been emphasised that no special right has been conferred on Shri Sohoni by virtue of clauses 1 to 9 nor any substantive right has been given to him. Though these submissions appear to be cogent and it appears that the Senior Manager, Industrial Relations could have signed the settlement. The question of rights of Shri Sohoni will have to be construed from the angle that these settlements were entered into on account of Power of Attorney.

62. Admittedly, the words in the Power of Attorney have much been criticised on account of giving a specific task to Shri Sohoni. But in my view, the legal sense of Power of Attorney has to be sensed by going to the root of the matter. The intention was and is to allocate certain power to attorney and also to ractify that such and such act done on the basis of the Power of Attorney, which the person who has given the authority could have done, had it been the case that the Power of Attorney has not been given. In other words, the intention of Power of Attorney is to allow a person of thinking to do certain acts on his behalf, who has given the

Power of Attorney for the reasons mentioned in the Power of Attorney itself. The person who is giving the Power of Attorney is not available for want of pre-occupancy. The extention of power specifically mentioned in the Deed shall give authority to the said Attorney to discharge the duties cast upon him by the said Authority. If at all the document is executed, then the said execution of document has to be legalised because no subsequent grievance is being raised by the individual workman or by the union which is representing the workmen. Therefore, only by virtue of one or two years here and there, if the entire transaction is seen by suspicious nature, it will not sustain in the eyes of law. The document has to be read as a whole alongwith intention behind it. Therefore, whenever the Power of Attorney given to Shri Sohoni came before us, we have to see the intention behind it and merely some words therein are having 2 meanings, will not itself vitiate the intention of the executant of the Power of Attorney. Similarly, it will not vitiate the document executed by the said Attorney relying on the authority given to him.

63. In pursuance of the above conclusion, the Sabha is reiterating again and again on the evidence led by the witnesses. The portion marked 'A' in the evidence of Shri Dalvi on page No. 4 reiterates that there were threats in the minds of the employees about the transfer out or Bombay or of stopping the increments. It is very pertinent to note that Shri Dalvi has accepted the signature on the document and accepted the correctness of it but only makes a grievance that the contents in the document are not discussed at all. Shri Dalvi has identified the names of Field Force employees Exh. U-37 and their signatures but has expressed that he is not able to say as to whether all these persons were having similar fear in their minds regarding their transfers or any adverse action against them. It is evident that same procedure for getting the signatures on the settlement has been adopted for the years 1997 to 1998.

64. In consonance with the above situation, once the settlements have been singed and till completion of a year, no grievance has been raised and that the employees have continued to sign on it for subsequent years till 1996 to 1998. Therefore, these settlements are to be seen as acquisance. The contention of Shri Dalvi indicates that he does not intend to have the benefits under such individual settlement but requires the benefits under the present reference as claimed in the charter. He admits that he received substantially high benefits under 1996 settlement compared to earlier increase given by the company on its own. The evidence of Shri Dalvi, therefore, can be treated as representative evidence so far as Field Force employees who have raised grievance about these settlements. It appears that a limited force of such employees of that categories have remained with the union and the Sabha. Therefore, it is raising a dispute regarding the validity of such settlement regardless the number of Field Force employees who have accepted the settlement and have appropriated the benefits thereunder.

65. In all these contentions, the question of Field Force supposed to be construed on All India basis or branchwise need not be stretched to find out the validity of the settlement. The contents in the Roopchandra Award of 1996 has much been relied on while calling the Bombay as head office. Therefore, the settlements signed at Delhi, Madras, Calcutta and Bombay *i.e.* at the distinct places, the validity cannot be challenged as the head office was in Bombay. Since the award has already drawn in terms of the said settlement, it cannot now remain to point that such settlement cannot be taken on record. The non-availability of record on account of fire which took place in the establishment also will not come into way for considerations.

66. Therefore, merely on the territorial basis, settlement entered into cannot be viewed adversely and, therefore, its validity cannot be challenged in the manner as being raised by the Sabha. I, therefore, hold affirmative finding to the said issue.

67. *Issue No. 5* :— Section 11 of the Civil Procedure Code defines the doctrine of *res judicata* and lays down that :—

"No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue ..... by such Court."

In other words, that a judgment given by the Competent Court or any issue which has been directly decided, the said decision operates as *res judicata* and it bars the subsequent trial of an identical issue in subsequent proceeding between the same parties. It is very pertinent to note that the question of applicability of doctrine of the *res judicata* has vehemently been raised by the company but when the question of availability of documents showing the substantial decision in the earlier proceeding as concerned, the huge documents do not reflect any more for attracting the said doctrine.

68. The applicability of the doctrine has been more clarified by Hon'ble Their Lordships of Hon'ble Supreme Court in a case of *M/s. Bharat Barrel and Drum Manufacturing Company Pvt. Ltd.* V/s. *Bharat Barrel Employees Union, 1987-I-LLJ-492* which lays down that :—

"The application of principle of *res judicata* does not mean that the question once decided cannot later re-opened. There are certain classes of dispute ..... .

Considering the rule laid down by Hon'ble Apex Court and referring to the definition of the doctrine, the record before me does not reflect that there is any other decision in the same matter decided between the parties for making doctrine applicable to the instant case. Hence, I answer issue No. 5 accordingly.

69. *Issue No. 6* :— The question of estoppel will have to be considered in the same line because the status of Field Force though was agreed by virtue of 1957 settlement, the company asserts that the said status cannot be barred by principles of waiver or estoppel. The contention of the company appears to be that once there is a valid termination of 1957 settlement, the company is free to raise the issue pertaining to the status of these Field Force employees as because of singing the settlement in the years 1996 to 2000. However, I do not agree with such views because in the earlier discussion, it has already been held that 1957 settlement has not been terminated legally at least till 1997, it was in tact. Therefore, it was held that the company was bound by the terms of settlement of 1957 which admittedly includes not raising the issue of the status of Field Force employees.

70. The company has relied on the rule laid down in a case of *H. R. Adhvantha* V/s. *Sandoz (India) Ltd. AIR 1994 S. C. 2608.* The question of Sales Promotion employees whether fall under the category of the employees was under consideration. Hon'ble Their Lordships have held that for the first time, by virtue of the Amending Act 46 of 1982, the categories of the workmen employed to do operation work, came to be included in the definition of the workmen. What is more, it is by virtue of this amendment that for the first time, those being non-manual, unskilled and skilled work also came to be included in the definition with the result that the person doing the skilled and unskilled work, whether manual or otherwise qualified to become workmen under the Industrial Disputes Act, 1947.

71. Connotation of word "skilled" in the content in which, it is used will not include the work of Sales Promoted Employees such as the Medical Representatives in this case. That word has to be construed "ejul" and thus construe would mean skilled work whether manual or non-manual which is of a general nature of the other types of work mentioned in the definition. The work of promotion of sales of the product or service of the establishment is distinct from an independent type of work covered by the said definition.

72. Besides this contention, Hon'ble His Lordship in Writ Petition No. 2313 of 2000 has referred to the agreement of these workmen by settlement that they are not the workmen within the meaning of Section 2(*s*) of the Industrial Disputes Act. In view of this situation, I am in careful abidance with the observation of Hon'ble His Lordship and Hon'ble Apex Court and hold that the question of applicability of theory of estoppel cannot be envisaged here.

73. *Issue No. 7* :— While considering the facts on record for answering this issue, we have to reiterate again the contentions of the company as it emphasised that the employees have accepted the validity of the settlement. By virtue of the discussion in the earlier paras, it has also been observed by this Tribunal that the validity of the earlier settlements cannot be challenged. Firstly, on the facts as well as on account of observation of Hon'ble High Court in Writ Petition No. 2313 of 2000. In fact, the observations clearly indicate of making an award. The order of Hon'ble High Court is very clear of making the award in terms of the individual settlement entered into by the individual Field Force employees in the years 1998 and 1999. These settlements are in suspicious to earlier settlements of 1996 and 1997. By virtue of this position, it can be safely averred that 1998 and 1999 awards are inclusive of the settlements of 1996 and 1997. Since the Hon'ble High Court has made an awards of 1998 and 1999, this Tribunal is duty bound to say that there is an award as such. There is no necessity for making any other award.

74. *Issue No. 8* :— Since the employees have already signed the settlements in 1996 onwards, there has to be award. The employees who have made a grievance about the said settlements have in fact, also signed on those settlements and thereafter made a grievance. The award drawn in terms of the said settlement is covering those employees also. Therefore, there has to be an award in respect of the settlement in respect of those employees who have also signed.

75. *Issue No. 9* :— The provisions under Section 19 of the Industrial Disputes Act are discussed earlier referring to termination of earlier settlements. To reiterate the earlier discussion, the question remains regarding the replacement of the settlement. In this regard, the company reiterates the settlements of 1996 to 1999 and also about the award which has been made for the years mentioned above. The notice of termination dated 3rd February 1997 Exh. C-169 has been considered through the evidence of Shri Sohoni Exh. CW-2. His evidence points out that the order of then Member, Industrial Court Shri Baj was referring to the non-following the legal provisions for terminating the earlier settlement. That lacuna seems to have been filled in, by the company and thereby issued a notice dated 3rd February 1997. Under this position, the observation of Hon'ble High Court in Writ Petition No. 2313 of 2000 which specifically concentrates on the part of individual Field Force employees who have accepted the validity of termination of 1957 agreement which does not come in their way to prolong the discussion with individual employees and the company. The outcome of the individual settlements is therefore, has to be considered as a valid individual settlements.

76. In the above context, even though there is a notice of termination of earlier settlement, the replacement of the earlier settlement which was entered into with Sabha is not on record. Therefore, in the existence of settlement with the Sabha and after termination of the said settlement by a valid notice, there is no bar in workmen's coming to settle the dispute and enter into 2(p) settlement. Section 2(p) defines terms settlement as below :—

> "Settlement arrived at in the course of conciliation proceeding and include a written agreement between the employer and the workmen arrived at otherwise in a course of conciliation proceeding where such an agreement has been signed by the parties thereto ..... ."

While interpreting these words, it has been made clear that Section defines two categories of settlements. The first settlement which is arrived at in the course of conciliation proceeding and secondly, a written agreement between the employer and the workman arrived at otherwise than in the course of conciliation proceeding. The lgeal effects of the settlements are identical. The settlement arrived at in the course of the conciliation proceeding of the present and future workmen has specified in Section 18(3) of the Industrial Disputes Act. The other kind of settlement points only on the actual party to the agreement as per the provisions of Section 18(*1*) of the Industrial Dispute Act, 1947.

77. Having regard to this legal position, the settlement entered into by these workmen postulates that they themselves have settled their dispute with the employer without intervention of any conciliation proceeding. It reflects that those workmen themselves are bound by the settlement without having any binding effect on the future employees. In this regard, the persons who have signed the settlements are obviously covered under the said settlement not the settlements will be binding on them. In the above clear position, whatever settlement entered into, therefore, will be within the meaning of second criterial under Section 2(p) of the Industrial Disputes Act and such settlements are to be treated isolatedly without considering that those have replaced the earlier settlement of 1957 entered into with the Sabha. In this contention, the conclusion drawn by the company that in view of the individual settlements, it is valid replacement to 1957 settlement cannot be sustained because the adjudication process still remains so far as remaining employees of Field Force is concerned and therefore, when this Tribunal has already held that the Sabha has locus, there still exists industrial dispute and, therefore, the said industrial dispute is required to be resolved by adjudicating the demands and proper and appropriate to replace the earlier one.

78. It has been emphasised that 1973 charter of demand was raised by Field Force employees of All India in Bombay on the head office management and that 1957 agreement being All India settlement, cannot be replaced at regional level. This issue seems to have been raised to justify the validity the subsequent settlement with the individual employees. Those settlements are being signed by the Branch Managers at the different stations. We cannot brush aside the fact that the Branch Offices are the part of the company. Inspite of this position, the settlement entered into in between 1975 onwards were by the individual employees. Therefore, the parties to the settlement were individual employee against the Branch Managers in that forum when the individual employee can negotiate and settle his service conditions with the management, it cannot be said that when the terms are agreed upon, the Manager of the particular branch cannot sign on the said settlement on behalf of the company. The settlements of 1996 and 1997 are in the same line. This fact has been admitted by the Sabha also as it was agreed to perpare the award so far as those settlements are concerned in view of the application Exh. U-141 and the order thereunder. In view of this proposition, it cannot be said that the settlements do not relate to head office establishment.

79. We cannot brush aside the fact that Field Force employees employed by the company are being spread over the country. Besides these conclusions, the position of this All India dispute has been made clear by the Hon'ble Supreme Court in its 1984 judgment. The background also clarifies that in the monthly meeting the head office has directed the branch establishments to ask Field Force employees to submit in writing that they have to concern with Sabha. The agreements, therefore, are the resultant outcome. The evidence of witness Shri B. B. Nagar Exh. CW-1 relates to his being incharge of Industrial Relations in regard to Field Force employees across the country. Shri Sohoni Exh. CW-2 has admitted that Industrial Relations Manager is incharge of Industrial Relations of All India basis and he reports to Personnel Director and the

All India Industrial Relations matter are decided by the Personnel Director. All the evidence as being led before the Court visualises the dispute pertaining to the individual employee and their signing the settlements whether can be treated as an all India basis or the regional basis ? In my view, when the settlements entered into by the individual employees in their individual capacity, these are to be honoured therefore, though it was held in the earlier discussion that by notice dated 3rd April 1997, there is a valid termination of 1957 arrangement, however, it has to be noted that the said settlement has not been replaced by another settlement as the earlier settlements were entered into by the individual employees under Section 2(p) of the Industrial Disputes Act, 1947.

80. Learned representative Shri Choudhary for the company has relied on the observations in a case of *All India Reserve Bank Employees' Association and another* Vs. *Reserve Bank of India and others, 1965-II-LLJ-175.* The Hon'ble Their Lordships have expressed the work "supervise" and its derivatives are not words of precise import and must often be construed in the light of the context for, unless controlled, they cover an easily simple oversight and directions as manual work coupled with the power of inspection and suprintendence of the manual work of others. It is, therefore, necessary to see the full context in which the words occur and the words in the definition of Section 2(s) of the Act are surest guide. By keeping in mind these guidelines, Hon'ble Their Lordships of Supreme Court in a subsequent case of *S. K. Verma* Vs. *Mahesh Chandra and Ors.1983 (4) Supreme Court Cases-214* have laid down that :—

> "Industrial Disputes Act is a legislation intended to bring about the peace and harmony betweeen the labour and the management in an industry and for that purpose, it makes provision for investigation and the settlement of industrial dispute".

It is, therefore, necessary to interprete the definition of "Industry", "workman", "industrial dispute" etc. so as not to whittle down to know advanced object of the Act. A pragmatic and not pediantic mode must be adopted. In a case of B. P. Maheshwari case Hon' ble Supreme Court have clarified that occasional entrustment of supervisory, managerial or administrative work will not take a person mainly discharging clerical duty, out of the purviw of section 2(s) of the Industrial Disputes Act, 1947 D. P. Maheshwari (Supra). Referring to these observations relied on by the company, the nature of duties rendered by these Field Force employees have been explained on record but once this Court has held that 1957 settlement is still valid, therefore, the term thereunder of not to challenge the status of these Field Force employees therefore, will not be a question for consideration and therefore, though these observations are cogent, I have found it just not to stretch much point of Field Force employees being the employees or not the employees.

81. *Issue No. 10* :— Before referring to the justification of the demands raised by the Sabha, the evidence led by the Sabha has to be taken into consideration. The principle underlaying the wage revision is that of the consideration of Industry-*cum*-Region Policy. The evidence on record of the Sabha is by examining Shri S. G. Dalvi, Madanlal R. Prabhakaran, Kuldeepsingh Sardarkalyansingh. Excepting the oral evidence, the documents substantiating the Region-*cum*-Industry Policy are also required for considering the comparative table. However, the comparison is not possible in the instant case because of non-availability of congent documents of the other comparable concerns. The available material before the Court now is the justification statement given by the union *vide* Exh. U-1. By virtue of the said statement, it is the basis that during the period of 17 years, there were 5 pay revisions. Therefore, the revision in pay-scales as claimed by the union itself is justified by the said earlier revisions. At this context, it is the contention of the company that the burden shifted on the Sabha for establishing the claim, has

not been properly discharged as because none of the witnesses on the point of wage revision has been given nor has raised any grounds for revising the wage-scales. It is also pointed out that there is no documents available for comparison of the comparable concerns to enable the company or the Court to consider in what manner the wage revision is to be made. By submitting these submissions, the company has accepted that of the revision in pay-scales denying the contention that there was no revision since 1975. Regardless to the contentions what is necessary to point out to see whether the employees in the clerical grade can compete with the pay-scales of Field Force employees. In the earlier 3 revisions and the earlier awards, the clerical workmen have been facilitated in all the revisions. In fact, the intervening 25 revisions entered into with the Field Force employees are according to the company, sufficient enough for considering their demands as what has been claimed by the union has been received in the earlier revisions by these Field Force employees. Having noted this contents, I have referred to the principle laid down while considering the wage revision for bringing the wages of Field Force employees at par with the grades of the clerical workmen. The principle for claiming such wage revision appears to be on "equal pay equal work". Keeping aside the point as to whether there is any evidence on record to consider that there is similarity in the work rendered by these two different categories of workmen. My attention was brought to the principles enunciated from the observation of higher Appellate Courts and Apex Court in a case of *Union of India* Vs. *Predeepkumar Dev, 2001-I-CLR-1.* In a case of *State of West Bangal and Ors.* Vs. *Hari Narayan Bhowal and Ors. 1995-II-LLJ-328* and *State of Uttar Pradesh* Vs. *J. P. Chaurasia and Ors. 1989-I-LLJ-309.* the common principle which can be laid down as below :—

(1) Historical facts have relevance.

(2) It is necessary to evaluate the duties and responsibilities.

(3) Necessary to evaluate the degree of performance and quality.

(4) There can be no mechanical application.

(5) The workmen must be doing identical work when belong to same class.

(6) They ought to be similarly situated and discharged similar functions.

Referring to these observations, it will, therefore, just to reopen the evidence on behalf of the Sabha, Shri Dalvi Exh. UW-1. Having referred to the signing the settlement by the several Field Force employees along with he himself and has reiterated that his fear psychosis while signing the settlement. Inspite of this position, he has pointed out in para. 7 that in addition to the earlier benefits which has accrued out of the settlement, he needs to have additional benefits which he may get in the present reference. This fact has to be reckoned with the understanding that the witness has specifically admitted that he has received the benefits under the individual settlements and has received those till retirement. This fact squarely goes to the root of the matter to justify that there were previous settlements. Those were signed by Field Force employees and the person who is benefitted out of those settlements is still now agitating for the additional benefits. The question, therefore, rightly being raised that for the purpose of Field Force employees whether it is necessary to adjudicate on the demands. By and large, the employees have accepted the settlement without raising any dispute to that effect nor the Sabha has raised the dispute. Therefore, the question of adjudicating, referring to the justification statement of the Sabha is the issue to be reconsidered.

82. In consonance with this discussion, I would rather say that the principles underlaying for considering the demands raised by the Sabha and which are reproduced in the earlier discussion, the additional question which needs to be determined is of the justifiability of the demands made by the remaining Field Force employees who claimed to be still with Sabha and the Sabha has proved to a locus to agitate the same. In para. 14 and 15 of the cross examination, there are some expert remarks pertaining to H.R.A., L.T.A., Medical Allowance etc. The remaining part of the evidence is that the acceptance of the rise given to the employees. So also evidence of Shri Prabhakaran if seen, it postulates that after 1971, there was no settlement between the company and the Sabha. However, he admits that the benefits which were given in the year 1975 by the company were taken those benefits. Pursuance to the nature of evidence as led by the Sabha, it is necessary to point out that the justification of the demands alleged to have been made by the Sabha will have to be found out on the basis of available evidence if any because the principle for Region-*cum*-Industry or production of documents of another comparable concerns is oking behind.

83. So far as earlier settlements are concerned, it has been submitted by the company that the principle of Region-*cum*-Industry has been followed. Therefore, in the absence of the cogent evidence so far as wage revision on the principle of Region-*cum*-Industry of Field Force employees, it has become very difficult to grant blatently the revision as claimed for. In other words, while applying the rules of natural justice, this Court will have sue moto looked into comparative statement and pay rise given to these Field Force employees and the clerical grade employees in the earlier settlements comparing to the present one. The difference in between last settlement and the demand placed in the present reference shall be cautioned for consideration. Learned representative Shri Choudhary has brought my attention towards observation of Justice Shri Kochar wherein the Hon'ble Apex Court in a case of *Tata Engineering and Locomotive Co. Ltd.* Vs. *Workmen, 1981-II-LLJ-431* which lays down that :—

> "A settlement cannot be weighed in any golden scale and the question whether it is just and fair has to be answered on the basis of principles different from those which came into play where an industrial dispute is under adjudication."

In pursuance of these averments, the earlier facts are being pointed out that since barring one or two, all Field Force employees have signed the settlement with their eyes open, then the presumption has to be in favour of the company that whatever settlements are entered into are presumed to be just, fair and proper. I again acceede to this principle without looking into the earlier settlement and terms thereunder and without comparing those with the present justification statement advanced by the Sabha.

84. *Demand No. 1.*— While justifying the demand, it has been pointed out that since 1955 to 1977, the pay-scales of Field Force employees have been revised for about 5 times. The range in which the pay-scales were revised has been given and justified for such demands that it will cover a period of 25 years because of binding effect of the pay-scales of these workmen from 1st January, 1974 to 1998. I have referred to Shri Bhojwani award dated 17th November 1977 more precisely on the aspect of placing these category of persons at a higher level than that of the Clerks. The Medical Representatives, Sales Supervisors are placed at a higher level than the Clerks category. The regard has to be given to the particular para No. 13 in the Bhojwani award. The figures of average earning of the Clerk is Rs. 14,630 and of Field Force employees

is as Rs. 17,170 possibly indicating the rise in pay-scale of the clerical cadre. Referring to these points, it has been vehemently submitted on behalf of the Sabha that there has to be pay revision in the pay-scales of Field Force employees.

85. Referring to these submissions, my attention was brought to the wage-fixation under various settlements entered into with the individual workmen by the company. The settlements are brought before the Court including the settlement of 1997 and 2000. It has been admitted by the witnesses on behalf of the Sabha that even by virtue of such settlement, there is substantial change in the emoluments of each of the category of employees including the Field Force employees.

86. At this juncture, I will reiterate that 2(p) settlement entered into with the substantial portion of the employees but the same was never been objected by the Sabha nor any alarm or displeasurs has been raised by any of the employees so far as pay-rise or revision in pay-scales are concerned. Therefore, while adjudicating the demands placed before this Tribunal, it has to be borne in mind that there are settlements entered into by the company and those, therefore, will have to be taken into consideration while effecting the pay revision as claimed. This process has to be adopted because of majority of Field Force employees have accepted the settlement and enjoyed the fruits of the pay revision. When the majority of the employees have accepted the terms, the beneficial interest of the workmen has to be presumed to have been followed or respected. By virtue of this, the pay-revision claimed will have to be revised in consonance with the last settlement entered into by the company with the individual employee.

87. Learned Advocate Mrs. Doshi has again relied on the observation of Baj award dated 29th June 1995 which refers to the reasons for revising the pay-scales of the clerical workmen in the employer company. If those are taken into consideration, in my view, a chronological expert remarks are also required to be made by this tribunal :—

(1) It is pointed out in the reason that the revision of wage-scales has not taken place for number of years. Now such is not the position because there are number of settlements which have revised the pay-scales substantially of the workers.

(2) C.P.I. has been considered while construing the norms of pay-rise or allowances to be awarded to the concerned workmen.

The other reasons as considered in the Baj award seem to have been taken into consideration at the time of entering into the settlement periodically with the individual workman. I am required to point out these aspects because the vehement submission of the company is on the cause that settlements are entered into without hinderance of any union or Sabha and the terms therein are pursuant to all the rules and regulation which are upheld by the Hon'ble Apex Court.

88. Pursuant to the above contention, the evidence on record indicates about periodical strike from 1974 till 1999 given by the company in pursuance of various awards like Bhojwani award and Dongre award etc. By virtue of these awards, taken into consideration till 1970 to 1999 when Shri Mehendale has given his award. It is evident that on every aspect, there is a pay-rise and was offered to the existing employees. This has to be compared with the process of contacting individual employees and also of those who have not made any application to that regard. In consonance with this position, what has been given to the Clerks and Field Force

employees was admittedly a higher side and that they are and were satisfied with the pay rise given to them by vertually settling the matter with the company. This process as said earlier is by keeping aside the Sabha.

89. This aspect has been referred by me again to reiterate that the employees who were getting the pay in the year 1971 are now getting much higher by virtue of periodical settlements and the awards being passed from time to time. Therefore, what has been awarded to the employees by the settlement of 1977 was though conclusively considering their demands, it has been objected by the Sabha only on the ground that those who were with Sabha were still having agitation of betterment in their pay-scales. In other words, though the demand is raised, we cannot brush aside the fact that what has been claimed has already been covered by the settlement of 1997. Therefore, there remains only a question of accepting the same to fortify the demands raised by the members of the Sabha. The Sabha has given tabuler information pertaining to say-scales changed from time to time alongwith allowances with effect from 1970 till 1999.

90. The tabuler information also specifically indicates about the pay-rise. Therefore, till finality of this reference or the demand raised under the charter one set of employees who have entered into individual settlements have already accrued the benefits of higher scale. The settlement, therefore, will have a binding effect on those who are the signatories of the same. In consonance with the said aspect, the Sabha has raised disputed point of applicability of the settlement and insisted for adjudicating the demands individually. Apart from the process of adjudication, the point raised by the Sabha is referring to the non-compliance of rule 62(4) of the Industrial Disputes (Bombay) Rules, 1957. The rule presupposes of sending the copy of the settlement to the Secretary to the Government of Maharashtra. The word indicates that the parties to the settlement shall jointly send a copy of such settlement when the settlement is arrived at otherwise than the course of conciliation proceeding. The very concept under para VII of the rules reiterated that non-compliance on the part of the company has become deathblow on the variasity and genuinenty of the individual settlement. Besides the company has not challenged the said reference order to the Hon'ble High Court. This version indicates that at one stage, the company is alleging against the appropriate Government for making a reference and on the other hand, not taking the matter in the higher Appellate Court against the said order.

91. Considering the positive assertion of the Sabha in this regard, in my opinion, the settlements are entered into by the company is an admitted position, the oral evidence on record indicates the veriasity of such settlement, the documentary evidence such as the settlement copy executed at one and the same time is also indicating that large number of workers have accepted the contents in the settlement. In that process, therefore, I do not find that this tribunal should be too technical on the aspect of not sending the copies to the appropriate Government and thereby to turn down those settlements in toto.

92. In the above context, regard has to be given to the point of the comparative table pertaining to the wage-scales given to the clerical staff by the provious award. The pay-scales which have been revised from time to time can be seen from the following tabular information.

Statement showing increase in salary and perquisites given to the clerical employees during the period 1974 to 1999.

	(Reproduced from)			
	(Bhojwani Award, para 57) *w.e.f.* 1970.	Dongre Award *w.e.f.* 1979.	Baj Award *w.e.f.* 1979.	Mahendale Award M.G.G. 29-10-1999.
Scale T-3	240-20-580	240-20-720		
T-4	310-22-684	310-22-830		
D.A.	(Same scheme as for field force)			
H.R.A.	Rs. 350 p.m. *w.e.f.* 1977.			
Statutory H.R.A.	5% of basic and D.A. from 1991.			
Special Allow.	Rs. 110 *w.e.f.* 1983 and Rs. 275 *w.e.f.* 1992 with arrears from 1987.			
Soc. Sec. Allow.	Rs. 60 *w.e.f.* 1983 and Rs. 210 *w.e.f.* 1992 with arrears from 1987.			
Ad hoc Allow.	Rs. 60 *w.e.f.* 1983.			
Conveyance Allow.	Rs. 250 *w.e.f.* 1992.			
Education Allow.	Rs. 100 *w.e.f.* 1992.			
Attendance Allow.	Rs. 60 *w.e.f.* 1992.			
Stagnation Allow.	Rs. 200 for T-3 and Rs. 250 for T-4 *w.e.f.* 1979.			
L.T.A.	Rs. 300 p.y. from 1970 and Rs. 1200 p.y. from 1985 with arrears from 1977.			
Self Dev. Allow.	Rs. 300 p.y. from 1985.			
Other benefits :				
Medical	Covered by Contributory Medical Scheme Gratuity (Rane Awd.) 20 months gross salary without ceiling Statutory Pension.			
Loan	From gratuity @ 7% interest. (as per Bombay High Court's judgment on Dongre Award).			

In view of the above, it appears to me that the scheme under the award is said to be same as per the field force employees. While Hon'ble Supreme Court have confirmed the award including Shri Baj award delivered in 1995. The question of revision of wages applicable to the clerical employees are not to be cogent in the sense whether any more revision is essential in accordance with the claim made on behalf of those. This fact has given a rise to reiterate that the company has already given the allowances as being ordered in Complaint (ULP) No. 751 of 1984. Inspite of such benefits, the contention of the Sabha in on the point of unilateral act of the company for withdrawing without issuing a notice under section 9A of the Industrial Disputes Act, 1947.

93. While referring to the observations of *AIR 1975 Supreme Court - 1856* with careful abidance with the observation, I have pointed out that the question while adjudicating the demand refers only to the principle considered earlier. The wage rise and C.P.I. are interconnected. The present life style and need of an individual person for keeping his body and soul together, the required amount has to be considered on that basis. Therefore, when the majority of the workmen are accepting that what has been given was appropriate, then legality of those earlier individual settlement need not be come into because admittedly, by each of the settlement, there is indeed a pay rise.

94. Learned representative Shri Choudhary has reiterated to concentrate on 1997 settlement for consideration of the pay scales etc. The sense in his submission indicates that there is indeed a pay rise considering the C.P.I. and potantiality of the company. This particular aspect has also been considered by Mrs. Doshi learned Advocate for the Sabha and has referred to the profits earned by the company during the year 1996 and thereby insisted for seeking a revision in the pay-scales which according to the company has remained unchanged since 1971. The increase of burden on the company, therefore, according to Sabha cannot be under any question.

95. After considering both these rival submissions, I am of the view that the contentions of the Sabha regarding unchanged service conditions since 1971 will not stand having regard to the subsequent periodical settlements entered into with the individual Field Force employees. There are more then 20 such settlements on record showing the pay rise and revision in pay scales. Such recourse is admitted by the Field Force employees and re-iterated in the oral evidence. Therefore, we cannot stick up to the 1971 settlement even in these days. Therefore, what is necessary to concentrate while considering the pay revision is on the pay-packet given by the settlement of 1977 which has been accpeted by large majority of the individual field force employees. On this provision, if at all what has been given under the settlement of 1977 when is found appropriate, they can be awarded to the part of the employees remained with Sabha. Obviously, this my observation will definitely reflect that the award in terms of 1997 settlement will have to be drawn.

96. *Demand No. 2* :— Referring to the adjustment, the Sabha has taken a recourse of the award given by Shri Dongre, the then Indistrial Tribunal and reiterates the same reasonings which have been raised at the same oppropriate time. My attention was drawn by learned Advocate Mrs. Doshi to the fact of company's withdrawing or of allowing which according to the Sabha, unilaterally given to the 900 field force who are not signatories to the individual settlement while implementing the basic and D.A. under 1971 settlement. Such withdrawal, according to the Sabha, was illegal. By virtue of such withdrawal the employees who are retired or left the services, are being thrown back to the terms of 1971 settlement without having any revision in their wages and therefore, it is prayed that what has been given, should not have been withdrawn and the members of the Sabha are entitled to the benefits, revision in pay-scales, gratuity etc. While considering the rival contentions, I have gone through the observation of Shri Bhojwani award as well as Shri Dongre award. In both these awards, adjustment in the revised wage-scales have been awarded with the benefit that who have completed 5 years of service, they will be given one increment in the revised wage-scales. After consideration of vehement submission of the learned Advocate Mrs. Doshi, I have referred to 1977 settlement for my perusal and referred to Annexure-I including the background as described. Annexure-II refers to the current wage packet and revised wage backet which admittedly is showing the rise in the scale. The agreement was entered into on 21st March 1997 and the effect of revised pay packet has been given from 1st April 1997. In clause 10 page 7 of the agreement, it has been made clear that except the changes set in the terms and conditions of service set out in Annexure-II and III of this settlement, other terms and conditions of service applicable to the employees, shall continue to be governed by 1996 2(p) settlement.

97. Exh. C-1999 is the 2(p) settlement of 1996. It also relates to the increase in the basic and other allowances with prospective effect. Therefore, what was given in the settlement of 1971 was comparing to the pay rise given by settlement of 1996 and 1997 is much more and thereby the effect of which has awarded an adequate pay package to the employees. By such conclusions, I am intending to again reproduce my earlier contention that if terms of settlement of 1997 is made applicable to the members of the Sabha, the question raised by them regarding their pay packet or adjustment etc. shall be resolved conclusively. Since no applaws has been made by the Sabha for entering into such settlement by the company nor any one of the signatory or members of the Sabha have agitated the contents in the said settlement. The terms

of pay-package giving *vide* increase, itself is sufficient to hold that same can be awarded in pursuance of the demand raised by the Sabha by making an award of 1997 settlement. Therefore, of adjustment and fitment shall be the features of 1997 settlement accordingly.

98. *Demand No. 5 - Gratuity* :— The demand raised for gratuity at the rate of one month of gross salary for each completed year of service limited to the extent of 20 months gross salary as well as advance to the employees against the employees shall be free of interest. Before considering the prayer, my attention was drawn to the earlier award delivered by Shri Rane in Reference (IT) No. 203 of 1970 published on 9th June 1983. It was confirmed up to Supreme Court. The application of the award was to the workmen in Bombay office and also workmen in Bombay factory also. I have referred to the terms of settlement of 1971 which has awrded half month's basic salary for every completed year of service after 15 years of continuous service and in a continuous service in between 26 to 35 years or more of continuous service, the gratuity shall be paid at the rate of quarter month's basic wages for every completed year of continuous service. The continuation of such retiring gratuity was effected subject to statutory modification if any. While giving award, the then Industrial Tribunal Shri Dongre has also taken a recourse of Shri Rane award in para 71 of his award saying that the terms of Rane Award are more beneficial and favourable. By the award of Shri Dongre, the gratuity is made payable as half month's wages for every completed year of service with a maximum of 20 gross wages. The rise claimed by the Sabha in the demand is of paying of one month's gross salary for each completed year of service now needs to be construed.

99. Shri Rane award or Shri Dongre award though upheld the contention of the employees for payment of gratuity at the respective rates, the rise in the said rate against the provisions mentioned in the Payment of Gratuity Act is the question to be determined on the ground whether the amount exceeding the statutory provision can be given or not. The Award has been confirmed and has been implemented and the Sabha is relying solely on the same. I do not find any justifiable reason for increasing in benefits for granting one month's wages in lieu of every completed year of service for the gratuity.

100. So far as earlier settlements referred above of 1996 and 1997 are concerned, these are being referred by Hon'ble his Lordship in Writ Petiton No. 2313 of 2000 and observed that by virtue of the settlements up 2000, these field force employees appeared to have received on an average increase of Rs. 2,000 to 3,000 p.m. The considerations to the figures of rise in wages is advolinium and not itemwise. In para 5 of the observations, Hon'ble his Lordship has referred to the figures of field force employees who have signed the settlements and the figures of the left back. Having noted the fact of admitting the settlements by majority of the employees, the validity of the settlement of 1997 has been upheld.

101. In para 15 Hon'ble his Lordship has also pointed out that there is no whisper on record on which such settlement can be said to be not fair and just. It is observed further that the company indead is an aggrieved party if adjudication still goes on even in respect of the demands of field force employees inspite of the amicable settlement. Considering the observation of our High Court in my opinion, when the terms of settlement are accepted by the employees and nothing adverse is seen even by the higher Appellate Court in these terms of settlement. Therefore, it will be appropriate for as to make an award in terms of the settlement of 1997. The subsequent part of it is that of the notice given by the company of terminating the earlier settlement within the meaning of Section 19 of the Indistrial Disputes Act. Therefore, the settlement entered into in the same year which is held to be a legal and valid settlement, then the term thereunder and the rise given thereunder will have to be made applicable to the remaining part of the employees might be very few in number. With this discussion, I hold that so far as adjudication in respect of the demands placed can be fulfilled when this Court will make an award in terms of the settlement of 1997.

102. The only question remains is that of the applicability of the award. Whether it can be related back in the year 1974 or from the date of award or from the date when the notice of termination was given. Therefore, henceforth, I am concentrating on the grant of relief in terme of settlement of 1997 with retrospective effect or with prospective effect.

103. It is quite natural that if the award is made, the workmen will expect that its implementation should be with retrospective effect. Hon'ble Apex Court in a case of *D. D. Coment* Vs. *Avtar Narin G. and Ors. 1962-I-LLJ-261* has dealt with there aspacts. The fact matrix indicates that the parties have come to a settlement and therefore, there was no adjudication as such procassed by the tribunal. The binding effact of the terms of settlement, therefore, will be restructed to the terms itself and not as demanded and directions were given by the Apex Court to the tribunal to revise the grades for the period subsequent to the agreement. By virtue of this fact, it is prayed by the Sabha for making an award applicable with retrospective effact. At the outset it has to be pointed out that if the observations are to be made applicable, it has to be reckoned that there are previous settlements in between 1975 and 1997. The date of retrospective effect, therefore, cannot comment the year 1975. The benefits in between the period of 20 settlements were already received by the parties. Therefore, when this tribunal has come to the conclusion for making an award in view of the settlement of 1997, then the benafits given in the settlement of 1997 are to be abided with even in view of observations in a case of *1962-I-LLJ-261(Supra).*

104. The justification for granting retrospective effact has hidden in the earlier discussion so far as the cause for raising the disputed demands are concerced. Therefore, in my view, the facts on record clarify that even after 1997, there are settlements of 1998 and 1999, then the text used in those settlements clarifies the situation. The situation is very clear that these 2 subsequent settlements are being accepted by the employees confirming the earlier revisions made during the years 1975 to 1996. In other words, the pay revisions during 1975 to 1996 are the cause for the outcome of the settlements of 1998 and 1999. Therefore, what has been agreed under the question of granting the relief with retrospective effect.

105. Hon'ble Their Lordship of Hon'ble Supreme Court have ruled in a case of *Wenger and Co.* Vs. *Their Workmen, 1963-II-LLJ-403* though has given the discretion to the Tribunal for fixing the date of having effect of the settlement, note of caution is given that the discretion should be spairingly used. It is observed that under Section 71(A)(4) of the Industrial Disputes Act, it is open to the Industrial Tribunal to name the date from which it should be come into operation and in case where the Industrial Tribunal think that its fair and just that its award should come into force from the date prior to the date of reference, it is authorised to issue a direction. In view of the earlier discussion of facts, I have found it just to grant the benefits under award from the year 1997 only.

106. Learned Advocate Mrs. Doshi has further indulged into submissions that the distinction between the branch office and the head office. She has pointed out that the present reference is in between the head office establishment of the company and therefore, whatever award will be made in the present reference will only be binding in respect of the head office establishment of the company. She has heavily relied on the observation of *Indian Oxygen Ltd.* Vs. *Their Workmen, 1969-I-LLJ-235.* The relevant observations pointed out are :—

> "Any award made by the Tribunal can operate only in respect of workmen of the Appellant company at Jamshedpur and the Tribunal's extension of that award to workmen in company's other establishment is clearly without jurisdiction."

Having regard to these submissions, I have already discussed the aspect of entering into the settlement with the different establishments and the control of head office over the branch offices. The point need not be discussed again. What is the question before this Tribunal is to effect the pay revision so far as the demands are raised and therefore, the applicability of Section 18(*3*)(*c*) of the Industrial Dispute Act needs no further comments as the legal position shall remain as it is.

107. However, it is necessary to point out that the persons employed in the various branches are employed by the company. The company is before the Tribunal in the adjudicatory process. The Power of Attorney to the respective Branch Managers have already been discussed. Learned representative Shri Choudhary has rightly pointed out that the oral evidence of the respective Managers and the employees eventually points out that Field Force employees are involved in selling of products of the company and are operating the said process from the respective branches. This fact according to me, indicates that overall control was of the head office of the company. Obviously, each and every branch is the part of the company. The employees signing on the settlement being from the respective establishment has to be considered that such settlement has also been signed by the Branch Manager of the company and they have signed for the company. Ultimately, the benefits are to be extended by the company and not by the respective branch offices individually. Keeping aside this controversy for discussion as points are already being discussed earlier, I am on the point of effect of the award. Those obviously will have a long lasting. Considering the earlier various settlements and its binding effect referring and comparing to the justification given by the Sabha, I am of the view for giving effect of the award from the date *i.e.* from 1997. Hence, I have passed my findings to the issues referred above accordingly and pass the following order :—

Order

(*i*) The Reference is hereby partly allowed.

(*ii*) Award be drawn in terms of the settlement of 1997.

(*iii*) The arrears be paid to the concerned workmen with effect from the date of reference *i.e.* from 1997 onwards within two months from the date of publication of the Award.

No order as to costs.

P. S. SAWANT,
Industrial Tribunal,
Maharashtra, Mumbai.

Mumbai,
Dated the 7th September 2002.

K. G. SATHE,
Secretary,
Industrial Tribunal, Maharashtra, Mumbai.

नि. जा. गजभिये,
कामगार आयुक्त,
महाराष्ट्र राज्य, मुंबई,

———

कामगार आयुक्त

महाराष्ट्र राज्य, कॉमर्स सेंटर, ताडदेव,
मुंबई ४०० ०३४, दिनांक १७ डिसेंबर २००२.

क्र. औ.स. /औविअ/प्रसिद्धी/निवाडा/प्र.-१७९ /२००२/कार्यासन-७.—ज्याअर्थी औद्योगिक विवाद अधिनियम, १९४७ च्या कलम ३९(ब) चे अंतर्गत प्रदान करण्यात आलेल्या शक्तींचा वापर करून महाराष्ट्र शासनाने आपल्या अधिसूचना क्र. औविअ/१०८०/ ५८/काम-२, दिनांक १६ डिसेंबर १९८० द्वारे असा निर्देश दिला आहे की, उक्त अधिनियमांच्या कलम १७(१) खाली शासनास वापरता येण्याजोगे अधिकार कामगार आयुक्त, महाराष्ट्र राज्य, मुंबई यांनाही वापरता येतील.

त्याअर्थी आता वरील नमूद केल्याप्रमाणे, औद्योगिक विवाद अधिनियम, १९४७ च्या कलम १७(१) च्या खालील शक्तींचा वापर करून कामगार आयुक्त, महाराष्ट्र राज्य, मुंबई हे मे. बॉम्बे ऑक्सिजन कॉर्पोरेशन लि., मुंबई व या आस्थापनेत काम करणारे यांचे औद्योगिक विवादाबाबत शासन आदेश क्र. सीएल/आयआर/२के/१७२/९७/मुं.का. ३अ, दिनांक ३ डिसेंबर १९९७ च्या संदर्भात औद्योगिक न्यायालय, मुंबई यांनी दिलेला निवाडा क्र. ८८/९७ प्रसिद्ध करीत आहेत.

नि. जा. गजभिये,
कामगार आयुक्त,
महाराष्ट्र राज्य, मुंबई,

BEFORE SHRI M. L. HARPALE, INDUSTRIAL TRIBUNAL, MUMBAI.

REFERENCE (IT) No. 88 of 1997. ADJUDICATION BETWEEN—M/s. Bombay Oxygen Corporation Limited.— *AND* —The workmen employed under them.

In the matter of charter of demands.

Appearances— Shri S. V. Alva Advocate for First Party Corporation.
Shri V. T. Mirajkar Advocate for Second Party Union.

INTERIM AWARD PART I (Bellow Exh. U-3)

1. The second party workmen represented by Maharashtra General Kamgar Union has filed this application for interim relief/award for granting Rs. 1,500 per month to each of the workmen with immediate effect.

2. According to the second party union, the last existing settlement was expired on 30th September, 1995 and fresh settlement/revision in wage scales was due on and from 1st October, 1995. However, due to adamant approach adopted by the first party Corporation, the workmen could not get any monetory benefit during this period from 1st October, 1995. The consumer price index has been increased and the value of money is gone down. The workmen are getting benefits as per the past settlement. Thus, it has become difficult for the workman to face the problems of rising prices. It is further alleged that the dispute referred to this tribunal would require some time for passing a final award. Meanwhile, the workmen would be deprived from the monetory benefits. It is, therefore, necessary to pass interim relief in favour of the workmen. No hardships would be caused to the first party Corporation, if the interim reliefs are granted. In other case, great monetory loss would be caused to the workmen, who have been deprived of from their legitimate demands. Lastly, it is prayed for granting Rs. 1,500 per month as interim relief award to each of the workmen with immediate effect.

3. On receipt of this reference/dispute for adjudication, the second party union filed their Statement of Claim at Exh. U-2 through its President. On perusal of the same, it appears that this charter of damands it made on behalf of the workmen of Mulund factory, Kalwa unit and Khopoli unit of which total number of employees is 140. Initially, there were 186 employees in these three establishments. Since the first party Corporation has modernised the Plant, the strength of the workmen is reduced to 140. It further appears that the first party Corporation has earned profits for the years 1995-96 and 1996-97. The figures of profits in both the years show that the financial position of the first party Corporation is extermely sound. It further appears that the charter of demands include 28 demands with regard to the wage scales and classification, dearness allowance, house rent allowance, leave Travel allowance, medical allowance, education allowance, special allowance, bonus, paid holidays, shift allowance, transport allowance etc. Lastly, they have prayed for granting all the demands in favour of workmen.

4. The first party Corporation has filed its say at Exh. C-5 to the application for interim reliefs and thereby contended that the prevailing conditions of the employees are more than reasonable. Considering the prevelant circumstances, and recession if any additional financial burden is imposed on the first party Corporation, it would be grave consequences and it would become difficult to survive the corporation in the highly competitive market. Thereafter, the first party Corporation has given its detailed reply on each demand, which can be discussed as and when required hereinafter. Lastly, the first party Corporation has denied the contention that the wages, allowances and other service conditions are less, as compared to other compaines. Thus, the second party union has not a case for granting any demand/interim relief.

5. Meanwhile, the first party Corporation made amendment in its pleadings and there by given the figures of amounts of profit before recession, net profits, sales expenditure, taxation, divided, general reserves for the year 2000 and for the period from January, 2001 to September, 2001. On the said figures of amount, it has submitted that the financial position of the first party Corporation is very alarming. There was absolutely no operataive profit at all for the last many years. The dividend was declared by transferring money from general reserves.

6. Heard the learned Advocates for both parties. On considering their arguments and the material on record, the following points arise for my determination and I have recorded my findings thereon for the reasons stated below :—

Points	*Findings*
(1) Whether the second party union has made out a *prima facie* case for grant of interim reliefs ?	Yes.
(2) Whether the Second party union/workmen is entitled to any relief/reliefs ?	Yes.
(3) What order and award ?	As per order below.

Reasons

7. The learned Advocate for the first party Corporation has submitted that the words "interim relief" appear in the M.R.T.U. and P.U.L.P. Act and not in the I.D. Act. The definition of the word 'award' speaks about final determination of the issues/dispute. Therefore, the interim relief cannot be granted in such reference proceedings. On the other hand, the learned Advocate for the second party union has submitted that the Court may grant interim relief in such reference. In support of his submission, he has relied on the case of Hotel Imperial *V/s.* Hotel Workers Union reported in *1959 II LLJ 534 S.C.* The relevant para pointed out is on page No. 551, which runs as under :—

> "The definition of the word "award" shows that it can be either an interim or final determination either of the whole of the dispute referred to the tribunal or of any question relating there to. Thus, it is open to give an award about the entire dispute at the end of all proceedings. This will be final determination of the industrial dispute referred to it. It is also open to the tribunal to make an award about some of the matters referred to it whilst some others still remained to be decided. This will be an interim determination of any question relating thereto. In other case, it will have to be published as required by Sec. 17. Such awards are however not in the nature of interim relief for they decide the industrial dispute or some question relating thereto. Interim relief, on the other hand, is granted under the power conferred on the industrial tribunal under Sec. 10(*4*) with respect to matters incidental to the points of dispute for adjudication."

From the above observations, it appears that the award can be either interim or final determination and either of the whole of the dispute or of any question relating thereto. Thus, there is no bar to the grant of interim relief/award.

8. On the point of the meaning of the award, the learned Advocates for the first party Corporation has also relied on 2 cases, one is between Sital and Central Government Industrial Tribunal and others reported in *1969 II LLJ 275 (M.)(P.).* He has relied on the relevant portion on page No. 278, which runs as under :—

"The word "award" as defined in clause (*b*) as See." of the Act means :—

"an interim or final determination of any industrial dispute or any question relating thereto by any labour Court, industrial tribunal, or national industrial tribunal and includes an arbitration award made under Sec. 10A.

We think that the word "determination" used in the definition implies adjudication upon relevant material by the labour Court or the tribunal."

He has also relied on the case between Cox and Kings (Agents) Limited And Workmen, reported in *1971 L LLJ 471 S.C.* The portion in Para No. 22 is relevant, which is as under :—

"The definition or "award" in Sec. 2(*b*) falls into two parts. The first part covers a determination, final or interim, of any industrial dispute. The second part takes in a determination of any question relating to an industrial dispute. But the basic postulates common to both the parts of the definition, is the existence of an industrial dispute, actual or apprehended. The "determination" contemplated by the definition is of the industrial disputes or a question relating thereto on merits."

The relevant portion relied on by the learned Advocate for the first party Corporation also allows this Court to decide the interim relief application and to grant the interim relief/award. Thus, there is no ambiguity about jurisdiction of this Court to decide such application and to grant any interim relief.

9. In para No. 2 in the statement of claim, the second party union has given the number of employees employed in the first party Corporation. According to it, there were 186 employees in the employment of the first party Corporation at Mulund, Kalwa and Khopoli. But it was reduced to 140 employees by modernising the plant and thereby increased the production. The first party Corporation has, however, denied the contention that the strength of the employees has been reduced. But, it could not give the previous strength of the employees and the strength at the time of filing of the statement of claim by the second party union. At present, it is not material for the purpose of deciding this application as to whether the strenth of the employees has been reduced or not, therefore it need not to consider this aspect.

10. It is not disputed that the demands were referred to the tribunal and subsequently settled by the first party Corporation and the second party Union by mutual understanding and they were declared by way of an award dated 23rd October, 1992. It was in force from 1st October 1992 and was to remain in force upto 30th September 1995. Thereafter, there is no settlement at all. On this point, it is the case of the first party Corporation that the earlier settlement was amicably settled and therefore, the terms of the said settlement are fair and reasonable and the same are bindings on the parties till they are duly terminated. On the other hand, the case of the second party union is that after the period of the last settlement, the workmen have not received any monetary benefits though the consumer price idex has been increased very sharply and the value of money is going down and down. Thus, the workmen are finding it difficult to maintain themselves and their family members and to face the problems of rising prices. Since there is no settlement at all after 1st October 1995, it appears substance in the contention made by the second party union.

11. The second party union has given the figures of amounts of profits, sales expenditure, dividends to share holders for the year 1995-96 and 1996-97 etc. It has also filed statement/ calculation in respect of net profits, sales, bonus, divided for the years 1995-96 to 2000 alongwith the application Exh. U-5. On perusal of the same, it appears that the first party Corporation earned not profit of Rs. 36.32 lacs for the year 1995-96; Rs. 251.99 lacs in 1996-97; Rs. 60.87 lacs in 1997-98; Rs. 18.64 lacs in 1998 (9 months) Rs. 16.03 lacs in 1999 and Rs. 09.86 lacs in the year 2000. The amount of net profit and all other items are not specifically denied. Therefore, it appears that the financial position of the first party Corporation at the time of this reference and during the period till 2000 was sound and it earned profits during the period as shown above.

12. The first demand is about wage Scales and Classification. On this point, it is the case of the first party Union that the wage scales were decided in 1992 by the last award. As per the said award, the highest pay of the Cashier/Depot Keeper starts from Rs. 150 and ends at Rs. 1,290 per month. The highest pay of the workmen category is also the same as of the Cashier. The wage scales of other staff and workmen is lower than the above highest scale. It starts Rs. 40 which is extremely low. On this point, the first party Corporation has submitted that there is no change in any circumstances and therefore, the existing wage scales and classification is reasonable enough. The second demand is of the Dearness Allowance. The second party union has claimed that variation of Dearness Allowance which is 115% revised textile dearness allowance may be increased to 225%. There is no 100% neutralisation of the increase in cost of living, by the revised textile D.A. Moreover, the financial position of the first party Corporation and the gross rationalisation of work force done by the Corporation through last several years will justify in increase in variable dearness allowance as demanded. As against the same, the first party Corporation has come with the case that at present the workmen are paid dearness allowance on the basis of the consumer cost of living index applicable to the textile mills operators in Greater Mumbai. Besides the same, 15% of dearness allowance is payable plus additional amount of Rs. 105 per month as an *adhoc* increment are given by way of dearness allowance. It is further case of the first party Corporation that there was no change in the existing claim of dearness allowance at the time of the last settlement and the same is reasonable.

13. The second party union has also raised the demands in respect of house rent allowance, leave travel allowance, medical allowance, educational allowance, etc. On all the demands in respect of the allowances, the first party Corporation has come with the case that the existing allowance is more than reasonable/adequate. From the above discussions and the discussions in the above paras, it appears that the first party Corporation has sticked up with the case that the last settlement was amicably settled and the same is in force and the service conditions in respect of the wages and allowances are more reasonable. The last settlement was for a period of 3 years ending September, 1995. No doubt, thereafter 5-6 years have been passed and the consumer price index has been increased and the value of money has been gone down. If it is so, it is not acceptable that the wages and allowances fixed at the time of the previous settlement arrived at 7-8 years age are more than reasonable and adequate.

14. On the point of financial capacity of the first party Corporation to bear the burden and the factors to be considered for fixation of wage scales, the learned Advocate for the first party Corporation has relied on several cases. They are as under :—

(1) Purohit and Purohit *V/s.* Sarva Shramik Sangh and another - *1998 II LLJ 185 Bombay.*

(2) B. P. Steel Industries (P.) Ltd. *V/s.* Industrial Workers Union and Ors. - *1998 I CLR 611 Bombay.*

(3) Workmen of Balmer Lawrie and Co. Ltd. *V/s.* Belmer Lawrie and Co. Ltd. and Ors. - *1964 I LLJ 380 S.C.*

(4) Williamsons (India) Pvt. Limited *V/s.* Its Workmen reported in *1962 I LLJ 302 S.C.*

(5) Novex Dry Cleaners Ltd. *V/s.* Its workmen and others reported in *1962 I LLJ 271 S.C.*

(6) M/s. Polychem Limited *V/s.* R. D. Tulpule and others reported in *1972 II LLJ 29 S.C.*

(7) French Motor Cars Co. Ltd. *V/s.* Their Workmen reported in *1962 II LLJ 744 S.C.*

(8) Greaves Cotten and Co. Ltd. *V/s.* Its Workmen reported in *1964 I LLJ 342 S.C.* and

(9) Remington Rand India Limited *V/s.* Its Workmen reported in *1969 FLR 46 S.C.*

None of the above cases is on the point of the interim relief, therefore, they can be considered while fixing wage scales and other allowances on evidence. At present, it would be sufficient to see as to whether the financial condition of the first party Corporation will bear the additional financial burden, if any, imposed while granting any interim relief. So far as the point of comparable concern is concerned, none of the parties has brought any evidence on record, therefore, the question of comparable concerns does not arise.

15. This application came to be filed in the year 1997. The figures of amount of profits for 2 years prior to the said application shows that the Corporation's financial position was very sound. Even thereafter, the first party Corporation earned profit till the year 2000. So donsidering this figures and the claim of the second party union, it appears that the first party Corporation can bear additional financial burden, in case some amount out of the amount sought by the second party union is granted by way of the interim relief to each of the concerned workmen. Recently, the first party Corporation has made amendment in respect of the figures of amount of profit, net profit, sales, income expenditure etc. for January, 2001 to September, 2001 and it has shown loss of Rs. 19.16 lacs. However, it has not produced any documentary evidence of balance sheet for the year 2001. Even if it is pressumed that there is such loss, the fast remains that the first party Corporation earned profits continuously for 5/6 years before 2001 and 2 years prior to the filing of this interim relief application. So considering overall conditions of the first party Corporation, the facts of the present case and the circumstances of the workmen, it appears that the first party Corporation can bear additional financial burden, in case some small amount of Rs. 500 per month per workmen out of the amount claimed by the second party union, is granted by way of interim relief in favour of the concerned workmen in the present reference.

16. From the above discussions, it appears that the second party union has made out a *prima facia* case for grant of interim relief. Further, the first party Corporation is able to bear additional financial burden if some amount upto Rs. 500 per month per workmen is granted by way of interim relief and to that extent, the interim relief can be granted in favour of the workmen concerned in the present reference. In the result, the Points Nos. (1) and (2) are hereby decided accordigly.

17. With this I proceed to pass following order :—

Order

(1) Application Exh. U-3 for interim relief is hereby partly allowed.

(2) The first party Corporation is hereby directed to pay Rs. 500 per month to each of the concerned workmen from the date of this application, within a period of 6 months and continous to pay the same till final order/award in this reference.

(3) Award part I be passed accordingly.

Mumbai,
Dated 8th October 2002.

M. L. HARPALE,
Industrial Tribunal, Mumbai.

K. G. SATHE,
Secretary,
Industrial Court, Mumbai.
Dated 22nd October 2002.

नि. जा. गजभिये,
कामगार आयुक्त,
महाराष्ट्र राज्य, मुंबई,

ON BEHALF OF GOVERNMENT PRINTING, STATIONERY AND PUBLICATION, PRINTED AND PUBLISHED BY SHRI PARSHURAM JAGANNATH GOSAVI, PRINTED AT GOVERNMENT CENTRAL PRESS, 21-A, NETAJI SUBHASH ROAD, CHARNI ROAD, MUMBAI 400 004 AND PUBLISHED AT DIRECTORATE OF GOVERNMENT PRINTING, STATIONERY AND PUBLICATION, 21-A, NETAJI SUBHASH ROAD, CHARNI ROAD, MUMBAI 400 004, EDITOR : SHRI PARSHURAM JAGANNATH GOSAVI.